

Kristin Hendrix - October 27, 2021

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

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HIGHLAND CAPITAL MANAGEMENT, )  
L.P., )  
Plaintiff, )  
vs. ) No. 21-03004-sgj  
HIGHLAND CAPITAL MANAGEMENT FUND )  
ADVISORS, L.P., )  
Defendants. )

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DEPOSITION OF  
KRISTIN HENDRIX  
October 27, 2021

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DEPOSITION OF KRISTIN HENDRIX, produced as a  
witness, duly sworn by me via videoconference at the  
instance of the DEFENDANTS, was taken in the  
above-styled and numbered cause on October 27, 2021,  
from 10:11 A.M. to 1:19 P.M., before BRANDON D. COMBS,  
CSR, RPR, in and for the State of Texas, reported by  
computerized machine shorthand, at 500 North Akard  
Street, 38th Floor, Dallas, Texas.

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## APPEARANCES

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1 KRISTIN HENDRIX,  
2 having been first duly sworn, testified as follows:

3 EXAMINATION

4 Q. (BY MR. RUKAVINA) Good morning. If you'll  
5 state your name.

6 A. Kristin Hendrix.

7 Q. We're doing this both ways. You're on the  
8 Zoom remotely and they can see you, but I would ask  
9 that you and I maintain eye contact. Of course, if  
10 someone is asking you on the Zoom, then maintain  
11 contact with them, if that's okay with you.

12 A. Sure.

13 Q. Have you been deposed before?

14 A. No.

15 Q. So I'm sure your counsel explained to you,  
16 but very quickly, you understand that you're testifying  
17 under oath and penalty of perjury as though you were in  
18 a court of law?

19 A. Yes.

20 Q. And you understand my job is to ask clear  
21 questions that you understand?

22 A. Yes.

23 Q. And if for whatever reason you don't  
24 understand my questions, please let me know or ask me  
25 to rephrase; otherwise, I'm going to assume that you

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1 understood my question; okay?

2 A. Yeah.

3 MR. MORRIS: Objection.

4 Q. (BY MR. RUKAVINA) Sometimes Counsel will  
5 make objections. Unless he instructs you not to  
6 answer, you're still required to answer my questions.

7 A. Okay.

8 Q. Now, in preparation for this deposition, did  
9 you read the deposition transcript or any part of it of  
10 Frank Waterhouse?

11 A. I did not.

12 Q. Did anyone provide you a synopsis or summary  
13 of it?

14 A. Maybe a few bits and pieces, but...

15 MR. RUKAVINA: Off the record for a second.  
16 (Off the record.)

17 Q. (BY MR. RUKAVINA) What do you mean bits and  
18 pieces?

19 A. I don't recall anything specific that was  
20 said, other than it was very long.

21 Q. Did you talk to Frank Waterhouse about it?

22 A. Did not.

23 Q. Other than Highland's legal counsel, did you  
24 talk to anyone else about -- or -- strike that.

25 Other than Highland's legal counsel, did you

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1 talk to anyone about Frank Waterhouse's deposition from  
2 last week?

3 A. I did not.

4 Q. Did you review -- strike that.

5 Did you see any of the video of  
6 Mr. Waterhouse's deposition?

7 A. Nope.

8 Q. Same questions now for Mr. Seery, S-e-e-r-y.

9 Did you read any portion or the whole of  
10 Mr. Seery's deposition from last week?

11 A. I did not.

12 Q. See any of the video?

13 A. No.

14 Q. Did you see any synopsis or summary of his  
15 deposition?

16 A. No.

17 Q. Did you talk to him about his deposition?

18 A. I did not.

19 Q. Other than talking to Highland's counsel, did  
20 you talk to anyone about Mr. Seery's deposition?

21 A. No.

22 Q. Other than talking to Highland's counsel, did  
23 you talk to anyone about your deposition today?

24 A. Just John Morris and Dave Klos.

25 Q. When did you talk to Mr. Klos, K-l-o-s?

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1           A.     First time about this was last Friday. And  
2 then again Monday this week. And yesterday. And this  
3 morning.

4           Q.     Friday was there any lawyer present during  
5 your discussion with Mr. Klos?

6           A.     Yes, every time Mr. Morris was present.

7           MR. RUKAVINA: Is it your position that those  
8 four discussions would be privileged, Counsel?

9           MR. MORRIS: Yes.

10          MR. RUKAVINA: Then we'll move on.

11          Q.     (BY MR. RUKAVINA) So we've established the  
12 four times you talked to Mr. Klos with counsel present.  
13 Did you do anything else related to or in preparation  
14 for today's deposition?

15          A.     Yes, probably went through and reviewed some  
16 emails, documentation that I may have had that I need  
17 to refresh memory on.

18          Q.     These documents and emails that you might  
19 have reviewed, did you supplementally provide them to  
20 counsel or anyone else?

21          A.     Yes.

22          Q.     This would have been in the last week or  
23 10 days?

24          A.     Yes.

25          Q.     Prior to the last week or 10 days, are you

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1 aware that my office served requests for production on  
2 Highland?

3 A. Yes.

4 Q. And did you do anything prior to the last  
5 week or 10 days to try to search both your personal  
6 records and corporate records for any responsive  
7 documents?

8 A. Not that I recall.

9 Q. Is that something that you understand legal  
10 counsel was charged with?

11 A. Yes.

12 Q. Let's go briefly now about your background,  
13 please.

14 Where do you live?

15 A. I live in Denton, Texas.

16 Q. And what is your date of birth, please?

17 A. January 26, 1982.

18 Q. And walk me through your educational  
19 background, starting with any postsecondary, if any,  
20 schooling or college or anything like that.

21 A. Sure. Graduated in 2004 from the University  
22 of North Texas with a degree in finance. Went on to  
23 get my MBA from SMU in 2009. And then went further and  
24 got my CPA license I believe in 2015.

25 Q. In the state of Texas?

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1 A. Yes.

2 Q. And has your CPA license been current since  
3 then?

4 A. Sure has.

5 Q. Have you faced any kind of disciplinary  
6 action as a CPA?

7 A. I have not.

8 Q. Now, please walk me through your work  
9 history. Let's say starting with after you graduated  
10 college.

11 A. Sure. December of 2005, which was shortly --  
12 sorry, 2004, shortly after I graduated from  
13 North Texas, I started at Highland. It was my first  
14 real job out of college. I have been there ever since,  
15 almost 17 years now.

16 Have worked in the corporate accounting  
17 department the entire time. Started off as the AP  
18 associate, and worked my way up over the years and  
19 currently am the controller.

20 Q. So even when you were getting your MBA and  
21 CPA you were employed by Highland?

22 A. Yes.

23 Q. Impressive. You're the controller today you  
24 mentioned?

25 A. Yes.

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1 Q. That's -- when did you become the controller,  
2 sometime February or March of this year?

3 A. Yes.

4 Q. Before you became the controller, what was  
5 your role at Highland?

6 A. Right before that I was assistant controller.  
7 That was I believe April of 2020. Before that, the  
8 senior accounting manager, and I held that position for  
9 years.

10 Q. So in May of 2019 would you have been the  
11 senior -- you said senior account?

12 A. Senior accounting manager I believe was my  
13 title.

14 Q. And would that have been your title in May of  
15 2017?

16 A. Yes, I believe so.

17 Q. And let's focus now on May 2019 as the senior  
18 accounting manager. How would you describe your role  
19 at Highland in May of 2019? What were your duties?

20 A. Sure. I helped with treasury management  
21 function, cash forecasts and things like that. And  
22 oversaw the financial reporting from the last batch of  
23 AP to all the way to financials and reporting on  
24 audits.

25 Q. Who did you report to in May of 2019?



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1 A. David Klos.

2 Q. What was Mr. Klos' title to your  
3 understanding back then?

4 A. I believe he was the controller.

5 Q. And do you have an understanding as to who  
6 Mr. Klos reported to back then?

7 A. Yes, Frank Waterhouse.

8 Q. Frank Waterhouse. Who was he in May of 2019?

9 A. The CFO.

10 Q. Is Mr. Klos still with Highland today?

11 A. He is.

12 Q. What is his role now?

13 A. He's now CFO.

14 Q. You mentioned treasury management as of 2019,  
15 May. What do you mean by treasury management? What is  
16 that?

17 A. Generally speaking, we -- it's not just me as  
18 one person. We have checks and balances.

19 My team would be in charge of sending out  
20 payments, reconciling bank statements, making sure  
21 money is in the right accounts, creating cash forecasts  
22 and reporting on those every week with the CFO and  
23 oftentimes the CEO.

24 Generally that's everything that fell under  
25 the umbrella.

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1 Q. And would your description of treasury  
2 management be the same for the December 2020 period?

3 A. Yes.

4 Q. Who at Highland or which group at Highland in  
5 December of 2020 would have been responsible for noting  
6 that there are certain bills that need to be paid in  
7 the near or subsequent future.

8 By way of, let's say, accounts payable or  
9 promissory notes or taxes or anything like that?

10 A. Can you repeat your question.

11 Q. Sure. So obviously, Highland was a pretty  
12 sophisticated business; correct?

13 A. Yeah.

14 MR. MORRIS: Objection to the form.

15 Q. (BY MR. RUKAVINA) And had various accounts  
16 payable; right?

17 A. Yes.

18 Q. And it had maybe, let's just say, certain  
19 note obligations that it had to pay from time to time;  
20 correct?

21 MR. MORRIS: Objection to the form of the  
22 question. Do you mean Highland Capital?

23 MR. RUKAVINA: I mean Highland Capital  
24 Management; correct, I'm sorry. The debtor.

25 Q. (BY MR. RUKAVINA) Can we say the debtor?

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1 A. Yes, you can say the debtor.

2 Q. So when I say the debtor and you say the  
3 debtor we understand each other to mean Highland  
4 Capital Management, comma, LP; correct?

5 A. Correct.

6 Q. I apologize. In the December 2020 period, I  
7 would imagine that the debtor had its own -- that  
8 was -- strike that.

9 We'll cut to the chase.

10 In December of 2020, the debtor was providing  
11 services to various other entities affiliated with  
12 Mr. Dondero; correct?

13 A. Correct.

14 Q. That would have included NexPoint Advisors,  
15 LP?

16 A. Correct.

17 Q. And you're aware that NexPoint Advisors was  
18 the obligor on at least one promissory note to the  
19 debtor; correct?

20 A. Correct.

21 Q. And did the debtor in December 2020 provide  
22 so-called treasury management services to NexPoint  
23 Advisors?

24 MR. MORRIS: Objection to the form of the  
25 question.

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1 THE WITNESS: Yes.

2 Q. (BY MR. RUKAVINA) As part of that, in  
3 December 2020, would it have been employees of the  
4 debtor that would have scheduled for potential payment,  
5 subject to approval by NexPoint, NexPoint's future  
6 obligations as they were coming due?

7 A. Yes, we would have scheduled, only with  
8 approval.

9 Q. And would that have included NexPoint's  
10 obligations on the promissory note to Highland?

11 A. Yes.

12 Q. Back to your background briefly.  
13 Do you have any legal training at all?

14 A. I do not.

15 Q. Do you have any courses, have you taken any  
16 courses in drafting promissory notes?

17 A. No.

18 Q. Do you believe that your expertise as a  
19 certified public accountant gives you any greater  
20 qualification than anyone else to prepare a promissory  
21 note?

22 MR. MORRIS: Objection to the form of the  
23 question.

24 THE WITNESS: No.

25 Q. (BY MR. RUKAVINA) Have you ever prepared or

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1 drafted a promissory note?

2 A. That term is probably used loosely. I have  
3 not completely drafted a promissory note from scratch,  
4 no.

5 Q. And we'll go into the details. Fair to say  
6 that you have taken a form promissory note and revised  
7 it?

8 A. Absolutely.

9 Q. Was this part of your job in May of 2019 at  
10 Highland?

11 A. Yes.

12 Q. Going back to the May 2019 time frame, were  
13 you part of a particular group at Highland, like  
14 accounting or legal or compliance?

15 A. Yes, corporate accounting.

16 Q. Corporate accounting. That's what you  
17 described before about treasury management and  
18 projections and forecasts?

19 A. Yes.

20 Q. In May of 2019, was it the practice at  
21 Highland that corporate accounting would be responsible  
22 for drafting intercompany promissory notes?

23 A. Not necessarily drafting, but updating a  
24 draft that had been previously produced and provided by  
25 our legal team, yes.

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1 Q. And Highland in May -- the debtor in May of  
2 2019 did have a legal department?

3 A. Yes.

4 Q. Kind of like the corporate accounting, there  
5 was a separate legal department; correct?

6 A. Correct.

7 Q. And who would have been in charge of that  
8 department in May of 2019?

9 A. Scott Ellington, E-l-l-i-n-g-t-o-n.

10 Q. In May of 2019 or by May of 2019 was there  
11 any practice at Highland as to whether its legal  
12 department would be involved with the drafting or  
13 execution of any intercompany promissory notes?

14 MR. MORRIS: Objection to the form of the  
15 question.

16 THE WITNESS: It depends on the note.

17 Q. (BY MR. RUKAVINA) What did it depend on?

18 A. Our typical practice is if we have a loan  
19 with certain affiliates that it's a demand note. We  
20 have a template that we have used for years that was  
21 created by either our internal legal team or an outside  
22 law firm, I'm not sure which.

23 The typical practice is always updating a few  
24 things on that template, getting it executed, and  
25 filing it in our audit folders.

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1 Q. By updating, what do you mean?

2 A. There's a few things that would need  
3 updating, the date.

4 Q. Maker?

5 A. Maker.

6 Q. Amount?

7 A. The dollar amount, the interest rate.

8 Q. And is it your testimony that the corporate  
9 accounting group would do these things on its own  
10 without necessarily the involvement of the legal group?

11 MR. MORRIS: Objection to the form of the  
12 question.

13 THE WITNESS: Generally, yes.

14 Q. (BY MR. RUKAVINA) Do you have any memory in  
15 or before May of 2019 if the corporate -- I'm sorry, if  
16 the legal group became involved in drafting or  
17 executing any prior intercompany promissory notes?

18 A. Yes.

19 Q. Explain to me what you remember about that.

20 A. I do know that they were involved with  
21 drafting restructured notes. So taking demand notes  
22 and turning them into a 30-year amort note.

23 That was in 2017. I know for sure that they  
24 were involved in that because it was something  
25 different. We weren't just updating a demand note.

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1 Q. Is it your testimony that to the best of your  
2 recollection by May of 2019 and in May of 2019 it would  
3 have been the corporate accounting group that would  
4 have handled routine intercompany demand notes?

5 A. Yes.

6 Q. And you can think of more than one instance  
7 on which that happened?

8 A. Yes.

9 Q. And this is not a memory test, but going back  
10 in time can you try to give an estimate of what year  
11 that first started happening, that the corporate  
12 accounting would handle the drafting or execution of  
13 intercompany demand notes?

14 A. As far as I can remember.

15 Q. Is it your testimony that as -- maybe even  
16 going back as far as 2005 there were intercompany  
17 demand notes?

18 A. Yes.

19 Q. I don't know how to ask this question, but  
20 was this a significant thing in corporate accounting or  
21 just another routine deal when you handled demand  
22 notes?

23 MR. MORRIS: Objection to the form of the  
24 question.

25 THE WITNESS: This is a routine job duty that



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1 we routinely did.

2 Q. (BY MR. RUKAVINA) Between 2005 and 2019, do  
3 you remember any maker on these intercompany demand  
4 notes actually being required to pay a demand note, in  
5 other words, Highland making demand?

6 A. Not that I can specifically recall.

7 Q. Do you have any recollection as to what  
8 happened to these intercompany demand notes over the  
9 years between 2005 and 2019?

10 A. Yeah. Typically anytime specifically Jim  
11 Dondero would need to move money between related  
12 parties, he would pay down -- when I say him, he would  
13 have us in corporate accounting move money around, pay  
14 off notes, reissue new notes somewhere else.

15 So a way to move money around between his  
16 entities.

17 Q. So let's use just hypotheticals here so that  
18 I'm not trying to pin you down to any specific fact.

19 But between 2005 and 2019, is it fair to say  
20 that if some Dondero entity that's not the debtor  
21 needed money and the debtor had money, then Dondero  
22 would have the debtor lend money to that entity on a  
23 demand note basis?

24 A. So long as they have the cash available to do  
25 so.

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1 Q. "They" being the debtor?

2 A. Debtor, yes.

3 Q. And is it fair to say, then, again  
4 hypothetically without any specifics, that if the  
5 debtor maybe from time to time needed money and one of  
6 these other entities had cash, then Dondero would cause  
7 that other entity to pay down the demand note?

8 MR. MORRIS: Objection to the form of the  
9 question.

10 THE WITNESS: Can you repeat that.

11 Q. (BY MR. RUKAVINA) Sure. So I think you  
12 mentioned that from time to time these entities would  
13 pay down these demand notes?

14 A. To the debtor?

15 Q. To the debtor.

16 A. Yes.

17 Q. And is that, hypothetically again, is that  
18 because on occasion the debtor might have needed cash  
19 and these entities had the cash, so Dondero would have  
20 them pay back the note?

21 MR. MORRIS: Objection to the form of the  
22 question.

23 THE WITNESS: Yes, that could be a reason.

24 Q. (BY MR. RUKAVINA) Can you think of any other  
25 reason in those 14 years?

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1           A.     If the debtor needed cash to lend to another  
2 entity.

3           Q.     I see. So again, it's all one big happy  
4 family, and whoever needed cash, the cash moved around;  
5 correct?

6           A.     Correct.

7           Q.     Was it Mr. Dondero that basically was the  
8 only deciding person in each instance that you're aware  
9 of in those 14 years as to when a note would be made or  
10 repaid?

11          A.     I can't answer specifically to that. Most of  
12 my direction came from our CFO at the time,  
13 Frank Waterhouse. So what conversations he would have  
14 with Jim Dondero, I can't answer to that. But I would  
15 suspect so, yes.

16          Q.     And in May of 2019 or by May of 2019, did you  
17 communicate personally, by email or telephone, in  
18 person, periodically with Jim Dondero?

19          A.     I can't say periodically, no.

20          Q.     Well, I'm not trying to put words in your  
21 mouth. Is it fair to say that you kind of -- your  
22 communications stopped with Mr. Waterhouse and  
23 Waterhouse communicated with Dondero, as opposed to you  
24 regularly communicating with Dondero?

25          A.     That's typical, yes.

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1 Q. Can you think of any instances in which  
2 Mr. Dondero gave you any instructions or you came to  
3 him seeking any instructions, without some intermediary  
4 between the two of you?

5 A. No, usually Frank was present.

6 Q. Would you categorize Mr. Waterhouse as kind  
7 of guarding with jealousy his access to Mr. Dondero?

8 MR. MORRIS: Objection to the form of the  
9 question.

10 THE WITNESS: No.

11 Q. (BY MR. RUKAVINA) What kind of boss was he  
12 in May of 2019? Was he laid back, or was he a jerk?  
13 Was he demanding? How would you characterize him in  
14 May of 2019?

15 MR. MORRIS: Objection to the form of the  
16 question.

17 THE WITNESS: I would say he was a good boss.

18 Q. (BY MR. RUKAVINA) You think he was competent  
19 as far as his job went?

20 A. Yes, very competent.

21 Q. Do you think he was competent as far as his  
22 job went in December of 2020?

23 A. Yes.

24 Q. January 2021?

25 A. Yes.

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1 Q. Was he patient and understanding as a boss?

2 A. Yes.

3 Q. Okay. Was he ever condescending or rude to  
4 anyone in your presence?

5 A. No.

6 Q. So you're the controller today at Highland,  
7 the debtor, the reorganized debtor; right?

8 A. Yes.

9 Q. And who do you report to? You mentioned  
10 Mr. Klos is the CFO?

11 A. Yes.

12 Q. And do you also report to Mr. Seery?

13 A. Yes, I think everybody does.

14 Q. And I don't need to know details, but I take  
15 it you're on a salary from reorganized Highland?

16 A. Yes.

17 Q. Is any part of your compensation merit or  
18 bonus based?

19 A. It could potentially be.

20 Q. Have you had any discussions with Mr. Seery  
21 or Mr. Klos about some sort of bonus compensation?

22 A. Yes.

23 Q. Has anything been agreed to?

24 A. Yes.

25 Q. And again, I don't need to know the exact

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1 numbers. What would your bonus compensation consist  
2 of? How would it be decided?

3 A. It's actually -- was decided when I agreed to  
4 stay on the Highland team back in February 2021, so  
5 it's in my employment agreement.

6 Q. So what's your bonus compensation?

7 A. I'm not sure I understand what you're asking.

8 Q. So is the bonus discretionary on the part of  
9 Highland?

10 A. No, it's a set amount.

11 Q. And what triggers it or governs the set  
12 amount?

13 A. Just it gets paid out on a certain date of  
14 the year. It's very straightforward, set out in my  
15 employment agreement.

16 Q. Is it irrespective of the performance of the  
17 reorganized debtor?

18 A. Yes.

19 Q. So why do you call it a bonus instead of base  
20 compensation?

21 A. That's what it's called in my agreement.

22 Q. So your base compensation and your bonus,  
23 it's your testimony, you're going to earn it  
24 irrespective of whether reorganized Highland does good  
25 or bad with respect to its profitability?

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1 A. Correct.

2 Q. And how Highland, reorganized Highland  
3 collects these promissory notes is going to play no  
4 part in your base and bonus compensation to your  
5 understanding; is that correct?

6 A. To my knowledge, yes.

7 Q. So you have no direct or indirect stake in  
8 the outcome of these litigations?

9 A. No.

10 Q. And you understand that I represent HCMFA and  
11 NexPoint?

12 A. Yes.

13 Q. And these court reporters are not familiar  
14 with some of our terminology. NAP [verbatim], if we  
15 say that, that means NexPoint; right?

16 A. Uh-huh.

17 Q. You have to say yes or no.

18 A. Yes, NPA, NexPoint.

19 Q. NPA. And when we say NexPoint, you and I are  
20 meaning NexPoint Advisors, LP; right?

21 A. Yes.

22 Q. And when we say HCMFA, we're meaning Highland  
23 Capital Management Fund Advisors, LP, yes?

24 A. Yes.

25 Q. What is your understanding of the two

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1 lawsuits, the one against HCMFA and the one against  
2 NexPoint, that you're being deposed on today?

3 MR. MORRIS: Objection to the form of the  
4 question.

5 Q. (BY MR. RUKAVINA) Who is suing who and for  
6 what?

7 A. I don't know all the details.

8 Q. So we've established that you've discussed  
9 these lawsuits in the last week or a little bit more  
10 with legal counsel. I don't want to talk about that.

11 Prior to these recent discussions, did you  
12 have any discussions with anyone at Highland about its  
13 lawsuits against HCMFA and NexPoint on promissory  
14 notes?

15 A. Repeat that again.

16 Q. Sure. So remember we're excluding the recent  
17 discussions in the last week or 10 days with counsel;  
18 right?

19 A. Okay.

20 Q. Are you aware that in January of 2021 the  
21 debtor sued NexPoint to collect on a promissory note?

22 A. I'm aware that demand notices were sent.

23 Q. So until recently you weren't aware that a  
24 lawsuit had been filed?

25 A. There's a lot of lawsuits filed. I can't



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1 keep track of what is what or what we're talking about  
2 at certain times.

3 Q. But you have no distinct memory of that?

4 A. Correct.

5 Q. And same question for the lawsuit that the  
6 debtor filed against HCMFA in January.

7 Do you have any specific memory of that  
8 lawsuit having been filed?

9 A. Not specifically.

10 Q. You mentioned that you're aware that on or  
11 before January 2021, demand letters had been sent?

12 A. Yes.

13 Q. Did you play any role in either drafting  
14 those demand letters or the decision to send them?

15 A. No.

16 Q. So going back to my question about these  
17 lawsuits, do you have any memory of anyone asking  
18 you -- again, excluding the last week or two.

19 Do you have any memory of anyone asking you  
20 to do anything with respect to either or both of these  
21 lawsuits?

22 A. No.

23 Q. You have no memory of Mr. Waterhouse,  
24 Mr. Klos, Mr. Surgent, or Mr. Seery asking for any  
25 background information or your input at all on these

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1 two lawsuits?

2 MR. MORRIS: Better not have been --

3 THE WITNESS: No.

4 Q. (BY MR. RUKAVINA) Who did I say? Did I  
5 misspeak? Okay.

6 Now we're going to have some exhibits here.

7 And do you have the labels?

8 Let's take a minute break off the record.

9 (Off the record.)

10 Q. (BY MR. RUKAVINA) Ms. Hendrix, I'm going to  
11 provide to you a promissory note in the original  
12 principal amount of \$5 million from HCMFA. This is the  
13 PDF version of this as filed with the Court for  
14 collection. It's going to be Exhibit 1.

15 (Whereupon, Exhibit 1 was marked for  
16 identification.)

17 Q. (BY MR. RUKAVINA) Before you look at  
18 Exhibit 1, I'm going to do the same thing for  
19 Exhibit 2, which is a promissory note from HCMFA for  
20 \$2.4 million, dated May 2, 2019.

21 (Whereupon, Exhibit 2 was marked for  
22 identification.)

23 Q. (BY MR. RUKAVINA) Again, Ms. Hendrix, these  
24 are the PDF versions of these notes as filed with the  
25 Court. Sitting here today, do you remember anything

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1 about either or both of these two promissory notes?

2 A. Sure, yes.

3 Q. What do you remember?

4 A. I remember seeing them because I've recently  
5 looked at them. I see them all the time in our loan  
6 tracking spreadsheets. My team would have been  
7 responsible for the whole process that I explained  
8 before when it comes to a promissory note.

9 Q. And --

10 MR. MORRIS: Are you finished?

11 THE WITNESS: Yes.

12 Q. (BY MR. RUKAVINA) And we have an email here  
13 that might give some more context to that if I can find  
14 it here.

15 This will be Exhibit 3. This is an email  
16 from David Klos to corporate accounting dated May 2,  
17 2019.

18 (Whereupon, Exhibit 3 was marked for  
19 identification.)

20 Q. (BY MR. RUKAVINA) Do you see this email,  
21 ma'am?

22 A. Yes.

23 Q. Okay. Corporate accounting, would that email  
24 group have included you?

25 A. Yes.

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1 Q. And this email says, Kristin, can you or  
2 Hayley. Do you think that Kristin was you?

3 A. I do.

4 Q. Do you remember receiving this email?

5 A. Not explicitly.

6 Q. So it says Blair. Who would Blair be?

7 A. Blair was our AP associate.

8 Q. What is her last name?

9 A. At this time it would have been Roeber,  
10 R-o-e-b-e-r.

11 Q. Okay. And did it subsequently change?

12 A. Yes, it's now Hillis, H-i-l-l-i-s.

13 Q. Please send \$2.4 million from HCMLP to HCMFA.  
14 This is a new interco loan. Kristin, can you or Hayley  
15 please prep a note for execution. I'll have further  
16 instructions later today, but please process this  
17 payment as soon as possible.

18 Did I read that correctly?

19 A. Yes.

20 Q. Do you have any memory of whether this email  
21 relates to Exhibit 2, the \$2.4 million promissory note?

22 A. It seems like it does, same date, same  
23 amount.

24 Q. Do you have any memory, or in reviewing your  
25 files did you see any similar email or document that

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1 would have related to Exhibit 1, the \$5 million  
2 promissory note?

3 A. Yes. I believe there's another email for  
4 that one.

5 Q. And do you believe that you provided that to  
6 counsel?

7 A. Yes.

8 Q. Recently or some time ago?

9 A. Well, I don't think I provided it, so I'm not  
10 sure when they got it. I know it has been provided.

11 Q. You know that it has?

12 A. Uh-huh.

13 Q. How do you know?

14 A. Because I've seen it.

15 Q. In the production that was produced to me?

16 A. Yes.

17 Q. And also from a David Klos?

18 A. This one, or on the -- when I say this one,  
19 on the \$2.4 million or the 5-?

20 Q. On the \$5 million note.

21 A. I'm not sure.

22 Q. Okay. Let me make sure I understand you  
23 correctly.

24 Sitting here today you believe that there is  
25 another email referencing the \$5 million loan that has

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1 been produced to my office?

2 A. Yes. I believe so.

3 Q. Okay. And going off memory, did it kind of  
4 say the same thing as this Exhibit 3 except that it  
5 referenced \$5 million?

6 MR. MORRIS: Objection to the form of the  
7 question.

8 THE WITNESS: Generally, should have said the  
9 similar situation, yeah.

10 Q. (BY MR. RUKAVINA) So Mr. Klos says, this is  
11 a new interco loan, for Exhibit 3. Other than what he  
12 told you, that this is an intercompany loan, did anyone  
13 else tell you or did you have any other information on  
14 May 2, 2019 that this was a loan?

15 A. I don't specifically recall these  
16 conversations, but I can tell you our normal practice  
17 would be we would either likely be in a cash meeting --  
18 and I say "we." Would have been myself, Dave Klos,  
19 Frank Waterhouse, potentially even Jim Dondero.

20 But I don't recall conversations on this  
21 specific date. But general practice is we would talk  
22 about it.

23 Oftentimes, Frank would either call Dave or I  
24 or stop by and tell us that, we need to send money to  
25 an affiliate, paper up a new loan, let's get a wire out

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1 the door, is typically how this works.

2 Q. Is the answer generally the same for the  
3 \$5 million note?

4 A. Yes.

5 Q. So is it fair to say that typically,  
6 obviously not every time, but typically your corporate  
7 accounting group when it would see intercompany  
8 transfers in large amounts would believe that they were  
9 loans?

10 MR. MORRIS: Objection to the form of the  
11 question.

12 THE WITNESS: Typically they were loans.  
13 There's not really another way to get money from one  
14 entity to another. And if they were papered as a loan,  
15 that means we were told to set it up that way.

16 Q. (BY MR. RUKAVINA) What do you mean papered  
17 as a loan? Aren't you papering it as a loan when  
18 someone makes the promissory note?

19 A. Yes, because we're told by somebody to do  
20 that.

21 Q. And in this instance, Mr. Klos on Exhibit 3  
22 told the group that this was a loan; right?

23 A. Correct. But he would have spoken with  
24 Frank Waterhouse or Jim Dondero prior to that, before  
25 telling anybody to do that.

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1 Q. Okay. And do you have any knowledge that he  
2 did speak to Mr. Waterhouse or Mr. Dondero before  
3 sending this email?

4 A. Again, I don't have specific knowledge on the  
5 exact conversations, but that's always how it has  
6 worked.

7 Q. That's how it was for 14 or 15 years;  
8 correct?

9 A. Yes.

10 Q. But you're logically assuming that it  
11 happened here. You don't know that it happened here;  
12 correct?

13 MR. MORRIS: Objection to the form of the  
14 question.

15 THE WITNESS: I would have to be fairly  
16 certain that it did, even though I can't recall  
17 specific conversations.

18 Q. (BY MR. RUKAVINA) Did you ask Mr. Klos about  
19 who told him that this is a new intercompany loan on  
20 Exhibit 3?

21 A. No. It's quite possible I was involved in  
22 the conversation. I reported to him. I wouldn't  
23 question his authority.

24 Q. Did you ask Mr. Klos who told him that the  
25 \$5 million deal was also an intercompany loan?



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1           A.    I did not ask that specific question that I  
2 can recall.

3           Q.    Did you ask Mr. Waterhouse whether either of  
4 these transactions were loans?

5           A.    I'm sure Mr. Waterhouse is the one that told  
6 us they were loans. We wouldn't just paper up a loan,  
7 send money out and call it a loan and account for it  
8 that way, unless somebody specifically told us.

9           Q.    Do you have any memory of Mr. Waterhouse  
10 orally or in writing or email or in any way, shape, or  
11 form on or about May 2 or 3, 2019 telling you that the  
12 2.4 million or \$5 million transfers were intercompany  
13 loans?

14          A.    No specific knowledge of exact conversations,  
15 but I'm certain that those conversations were had  
16 because that's the only way that we would have papered  
17 up a loan, sent money out as a loan, had them on our  
18 financials for two years.

19          Q.    So you're saying that this email, Exhibit 3,  
20 from Mr. Klos was not enough, that there would have  
21 been other things that happened to make you and other  
22 people in your group confident that these were loans?

23          A.    Yes.

24          Q.    And these other things would have been in  
25 person or by email?

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1 A. Most likely in person via phone call.

2 Q. Okay. So again, you have no specific memory  
3 of it, but based on the 14-year pattern and conduct you  
4 believe that you would have discussed these two  
5 transfers with Mr. Waterhouse and he would have told  
6 you these are loans?

7 MR. MORRIS: Objection to the form of the  
8 question.

9 THE WITNESS: Correct.

10 Q. (BY MR. RUKAVINA) And then would he have  
11 told you to take care of the promissory notes, or was  
12 that Mr. Klos here in Exhibit 3?

13 A. It could have been both. It's clearly Dave  
14 in this email, but Frank could have also said that to  
15 me.

16 Q. Now, do you -- strike that.

17 In May of 2019, did you know or were you told  
18 why these \$7.4 million were being transferred from the  
19 debtor to HCMFA?

20 A. Yes. I do have recollection that -- I do  
21 know that there were two big events in May 2019.  
22 2.4 million was related to a TerreStar NAV error, with  
23 one of the funds advised by HCMFA. That's Global  
24 Allocation Fund.

25 Similar with the \$5 million loan. There was

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1 a consent fee that the advisor of the Global Allocation  
2 Fund had promised to pay to shareholders of that fund,  
3 and it was in the amount of \$5 million roughly.

4 So both of these loans were for those  
5 purposes respectfully.

6 Q. And were you in May of 2019 also aware that  
7 in addition to the \$2.4 million, there was another more  
8 than \$5 million paid to that fund by HCMFA's insurer as  
9 compensation for the NAV error?

10 A. By the insurance company, yes.

11 Q. So the \$7.4 million, you understood then was  
12 a loan as opposed to compensation to HCMFA?

13 A. Yes.

14 Q. Okay. Did you understand in May of 2019 that  
15 it had been the debtor and its valuation team that  
16 caused that NAV error?

17 MR. MORRIS: Objection to the form of the  
18 question.

19 THE WITNESS: I can't answer that. I was not  
20 involved with the activities leading up to the NAV  
21 error.

22 Q. (BY MR. RUKAVINA) How do you know that the  
23 \$7.4 million were being transferred for the NAV error  
24 and consent fee?

25 A. Because I do know about both of those

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1 instances and I do know that HCMFA needed to pay these  
2 dollar amounts for both of those.

3 Q. And you knew that in May of 2019?

4 A. Yes.

5 Q. How did you know that in May of 2019?

6 A. It was lots of discussions had been going on  
7 around both of these issues for months. These weren't  
8 surprises to anybody.

9 Q. So although you weren't involved directly  
10 with the NAV error issues, it was more or less common  
11 knowledge in your accounting group?

12 A. Correct.

13 Q. Do you have any knowledge at all as to  
14 whether Mr. Dondero decided to transfer these  
15 \$7.4 million not as a loan, but to compensate HCMFA for  
16 the debtor's alleged liability?

17 A. Have not heard of that.

18 Q. Ever?

19 A. Never.

20 Q. But you also never heard Mr. Dondero say that  
21 these \$7.4 million were a loan; correct?

22 A. That was not told to me directly.

23 Q. Again, you're logically assuming that based  
24 on many instances of intercompany transfers in the  
25 14 years prior to that?

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1 MR. MORRIS: Objection to the form of the  
2 question. Mischaracterizes the testimony.

3 THE WITNESS: Correct.

4 Q. (BY MR. RUKAVINA) I think you answered  
5 correct?

6 A. Correct.

7 Q. And you mentioned that after these notes, you  
8 saw them on internal financials and that reinforces  
9 your view that these were loans?

10 A. Correct.

11 Q. But as of May 2 and 3, 2019, no one had told  
12 you directly that these are loans?

13 MR. MORRIS: Objection to the form of the  
14 question. It's in writing.

15 THE WITNESS: That's not what I'm saying at  
16 all.

17 Q. (BY MR. RUKAVINA) Other than Mr. Klos' email  
18 or emails, no one told you on May 2 or May 3, 2019 that  
19 you remember today that these were loans?

20 A. It quite possibly could have been told to me  
21 in addition to this email.

22 Q. I understand. You just have no memory of  
23 that today; correct?

24 A. Correct.

25 Q. Is there anything that you can think of

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1 sitting here today to refresh your memory on that  
2 point?

3 A. I do not think so. I'm sure there was  
4 conversation that unfortunately would not be in an  
5 email.

6 Q. Now, we have the Word documents, the Word  
7 version of these two promissory notes, and you're going  
8 to have rely on me that I printed these out as  
9 Mr. Morris sent to me. If I'm misleading you on that,  
10 then I'm in trouble and your answers don't count.

11 So please assume that I didn't doctor these  
12 and that I printed them out as they were prepared to  
13 me; okay?

14 A. Yes.

15 Q. So Exhibit 4 will be the \$5 million note and  
16 Exhibit 5 will be the 2.4 million.

17 (Whereupon, Exhibits 4 & 5 were marked for  
18 identification.)

19 Q. (BY MR. RUKAVINA) Before I ask about 4 and  
20 5, to be fair to you and refresh your memory, I'm going  
21 to provide you printouts of the metadata, metadata --  
22 I'm not sure how to better say that -- for both notes.

23 And again I'm representing to you that I  
24 printed out the metadata without doctoring it, so  
25 please assume that's true, and if it's not, your

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1 answers don't count and I'm in trouble.

2 6 will be the \$5 million note, and 7 will be  
3 the \$2.4 million note.

4 (Whereupon, Exhibits 6 & 7 were marked for  
5 identification.)

6 Q. (BY MR. RUKAVINA) Okay. So Exhibit 4 and 5  
7 are the Word documents. Do you have any memory of you  
8 doing anything with respect to these two Word  
9 documents?

10 A. I don't have specific memory, but generally  
11 speaking, it was my job to update promissory note  
12 templates and create promissory notes.

13 Q. So do you believe that -- we discussed  
14 earlier that your group would have used a template and  
15 that it would have made changes reflecting the maker,  
16 amount, date, interest rate.

17 Do you believe you were the one with respect  
18 to 4 and 5 that updated that template to create 4  
19 and 5?

20 A. I'm sure that I was, yes.

21 Q. Well, Exhibit 6 -- do you know what metadata  
22 is?

23 A. Sort of.

24 Q. What's your understanding of what metadata  
25 is?

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1           A.     Just in context from speaking on it recently,  
2     it's going to tell you who made changes to the  
3     documents, is what I would assume.

4           MR. RUKAVINA: Go off the record for one  
5     second.

6           (Off the record.)

7           Q.     (BY MR. RUKAVINA) So a little bit of error  
8     on my part. We'll have some more metadata, but we can  
9     still talk about 6 and 7.

10           It says the author JFORSHEE, J-F-O-R-S-H-E-E.  
11     Do you recall or do you know who that person was?

12           A.     I recognize the name, and it makes sense.  
13     This says Strasburger is the company. I think he was  
14     one of the lawyers that we had used at some point in  
15     time.

16           Q.     Strasburger is a law firm?

17           A.     Yes.

18           Q.     And then it says, so Exhibit 6 created May 3,  
19     Exhibit 7 created May 2, modified, accessed. Does that  
20     to the best of your understanding comport with when  
21     Exhibits 4 and 5 were actually created?

22           A.     Can you repeat that.

23           Q.     Yeah. We'll wait for the rest of the  
24     metadata. But let's go back to 4 and 5.

25           In and by May 2019 I think you mentioned that



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1 it was your job to, I think you said update promissory  
2 notes?

3 MR. MORRIS: Objection to the form of the  
4 question.

5 Q. (BY MR. RUKAVINA) Let me take that question  
6 back.

7 You testified earlier that your group would  
8 have taken a template and used it to create or prepare  
9 a new promissory note; right?

10 A. Right.

11 Q. How would you call that process? What word  
12 would you use for that process?

13 A. Let's call it papering the loan.

14 Q. In May of 2019, was it your job to paper the  
15 loan?

16 A. Yes.

17 Q. Would anyone else at the corporate accounting  
18 group have been responsible to paper a loan?

19 A. At that time, I don't think so. I think I  
20 was the one doing it.

21 Q. I think you mentioned that you think you  
22 papered the loan, respecting Exhibits 4 and 5; correct?

23 A. Correct.

24 Q. You have no distinct present memory of  
25 papering 4 and 5; correct?

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1 A. Correct.

2 Q. Can you think of anyone else at the corporate  
3 accounting group that would have papered 4 and 5?

4 MR. MORRIS: Objection to the form of the  
5 question.

6 THE WITNESS: The only other person that  
7 could have would either be Dave Klos or Hayley Eliason.

8 Q. (BY MR. RUKAVINA) What was Hayley's role in  
9 May of 2019?

10 A. She was the accountant. I can't recall her  
11 specific title.

12 Q. Now, in May of 2019 when you papered a loan,  
13 would you have consulted with either internal or  
14 external legal before finishing that loan or presenting  
15 it for signature or anything else?

16 A. Not if it was just our standard demand note  
17 that we already had a template on.

18 Q. So would it have been your general course in  
19 May of 2019, if you prepared Exhibits 4 and 5, not to  
20 seek advice from internal or legal before proceeding  
21 with these notes?

22 A. With these two specific notes?

23 Q. Yes.

24 A. Yes.

25 Q. If we flip the page, I'll represent to you

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1 that Mr. Waterhouse's signature there appears on the  
2 Word document as an image.

3 A. Uh-huh.

4 Q. Do you have any memory of whether there was  
5 an image that someone would have affixed of  
6 Mr. Waterhouse's signature to promissory notes?

7 A. Yes. We typically always -- he was  
8 completely fine with having documentations -- sorry,  
9 having documents signed or executed with his  
10 e-signature.

11 Q. Would these pictures of his signature have  
12 been his e-signature in May of 2019?

13 A. Yes.

14 Q. So let's just clarify that because I don't  
15 want there to be any confusion.

16 I know there's some computer programs out  
17 there that are restrictive and have passwords before  
18 any signature is printed. And then there's some people  
19 that use a stamp or an image; right?

20 MR. MORRIS: Objection to the form of the  
21 question.

22 Q. (BY MR. RUKAVINA) Are you following me?

23 A. I follow you.

24 Q. In May of 2019, did Mr. Waterhouse have any  
25 specific program that would have to -- you would have

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1 to go through before it would spit out his e-signature,  
2 or was he fine with you and his staff using an image  
3 like this?

4 A. He was fine with using his e-signature, and  
5 what is on these documents was that exact e-signature.  
6 So I don't know if he had -- I don't know how it was  
7 created originally.

8 Q. The e-signature?

9 A. E-signature.

10 Q. Do you have any memory with respect to  
11 Exhibits 4 and 5 of getting Mr. Waterhouse's specific  
12 approval to use his e-signature?

13 A. I don't have exact specific memory, same as  
14 conversations on these loans. But he would have had to  
15 approve this loan in the dollar amount, the day.

16 He would have been the one directing us to  
17 create these loans. In past practice he has always  
18 approved using his e-signature to execute documents.

19 Q. How would he have approved Exhibits 4 and 5?  
20 By that, I mean by email or memorandum? How would he  
21 have approved it in May of 2019?

22 MR. MORRIS: Objection to the form of the  
23 question.

24 THE WITNESS: I would assume that, as I've  
25 stated previously, these directions were coming

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1 directly from him to paper a loan. These changes that  
2 are made are only to the dollar amount. Interest rate  
3 is pulled right off the IRS website.

4 That is his approval to paper a loan and in  
5 fact execute or approve the loan.

6 Q. (BY MR. RUKAVINA) In May of 2019, would  
7 Mr. Waterhouse -- what was his practice as far as using  
8 an ink signature on documents as opposed to an  
9 e-signature? Did he have a practice?

10 MR. MORRIS: Objection to the form of the  
11 question.

12 THE WITNESS: He has never specifically said,  
13 on certain documents I would like to ink it with my  
14 signature. Probably at this time, 99 percent of the  
15 stuff my team got his signature on was his e-signature.  
16 I think it just depended on the group and what it was.

17 Q. (BY MR. RUKAVINA) So how would he authorize  
18 you or your team to use his e-signature for any given  
19 document in May of 2019?

20 MR. MORRIS: Objection to the form of the  
21 question.

22 THE WITNESS: Through the conversations that  
23 would have been had before these emails went out saying  
24 paper loan.

25 Q. (BY MR. RUKAVINA) And -- okay. So, and

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1 after his e-signature was used either on these notes or  
2 other documents in May of 2019, would you have brought  
3 the documents back to him for any kind of verification?

4 MR. MORRIS: Objection to the form of the  
5 question.

6 THE WITNESS: Probably not. These are all  
7 very standard. We've papered hundreds of loans. So I  
8 think he trusted that we can handle updating a date and  
9 a dollar amount on these loan templates.

10 Q. (BY MR. RUKAVINA) Do you know or believe, or  
11 your recent review of documents, did it reveal an email  
12 from Mr. Waterhouse to you specifically authorizing his  
13 e-signature on Exhibits 4 and/or 5?

14 A. Not that I recall seeing, no.

15 Q. Sitting here today, do you have any memory of  
16 Mr. Waterhouse orally or otherwise specifically  
17 authorizing you to affix his e-signature to Exhibits 4  
18 and/or 5?

19 A. Specifically on these loans, no, I don't  
20 recall those conversations. But, again, our practice  
21 has always been we have this discussion, he's under the  
22 understanding that we're going to paper the loans, he's  
23 always comfortable with using his e-signature.

24 This is not something me or my team would  
25 have done without that authority and approval from him.

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1 Q. But you have no memory of that authority or  
2 approval, specifically for 4 and 5?

3 MR. MORRIS: Objection. Asked and answered  
4 about five times.

5 THE WITNESS: Same as my answer I just gave.

6 Q. (BY MR. RUKAVINA) And I think you mentioned  
7 that in your years at Highland your team papered  
8 hundreds of loans?

9 A. Yeah.

10 Q. In your time at Highland, is it your  
11 testimony that the accounting -- corporate accounting  
12 department never made a mistake with respect to  
13 anything that it did?

14 MR. MORRIS: Objection to the form of the  
15 question.

16 THE WITNESS: No, I did not say that.

17 Q. (BY MR. RUKAVINA) Do you recall any mistakes  
18 in your time at the corporate accounting group at  
19 Highland that had been made, any significant mistakes?

20 MR. MORRIS: Objection to the form of the  
21 question.

22 THE WITNESS: Significant mistakes, not that  
23 I can recall.

24 Q. (BY MR. RUKAVINA) No accounts payable  
25 mistakenly paid?

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1 MR. MORRIS: Objection to the form of the  
2 question.

3 THE WITNESS: I cannot specifically answer  
4 that question with 17 years of work to recall, sorry.

5 MR. RUKAVINA: Just take a quick break. If  
6 you need a restroom -- off the record.

7 (Off the record.)

8 Q. (BY MR. RUKAVINA) Going back to Exhibits 4  
9 and 5.

10 Mr. Waterhouse signed these promissory notes.  
11 Is there any particular reason why he signed them as  
12 opposed to Dondero or someone else?

13 A. No particular reason. He's an officer for  
14 both companies. He's a signatory.

15 Q. Who decided, if anyone, to your knowledge,  
16 that he would be the one signing the notes, these two  
17 notes?

18 A. I don't know who would have decided that, but  
19 typically if Frank specifically wanted Jim Dondero to  
20 sign it, he would say, take it to Jim to sign.

21 Q. Do you have a recollection of  
22 Mr. Dondero -- strike that.

23 Do you have a recollection of Mr. Waterhouse  
24 signing other promissory notes?

25 A. Yes. I know for sure he has signed other



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1 promissory notes. I can't tell you explicitly which  
2 ones.

3 (Off the record.)

4 Q. (BY MR. RUKAVINA) Are you saying that in May  
5 of 2019 -- strike that.

6 By May of 2019, was it not the standard  
7 practice at the debtor that Mr. Dondero would sign  
8 intercompany promissory notes?

9 MR. MORRIS: Objection to the form of the  
10 question.

11 THE WITNESS: No, that's not standard  
12 practice. Just needed to be somebody -- somebody who  
13 is a signer for the entity on the incumbency  
14 certificate.

15 Q. (BY MR. RUKAVINA) Was there a standard  
16 practice, or did you just describe the standard  
17 practice that it was someone on the incumbency  
18 certificate?

19 A. That's correct, somebody on the incumbency  
20 certificate. Frank is a great prospect to sign, with  
21 giving direction to set loans up, send money out. Why  
22 wouldn't he sign it.

23 Q. Do you have any memory sitting here today of  
24 Mr. Waterhouse telling you or agreeing that he would be  
25 signing these two promissory notes for HCMFA?

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1           A.    Not specifically, but he didn't need to tell  
2 me.   He typically would tell me if he wanted Jim to  
3 sign them.

4           Q.    Sitting here today, do you have any memory of  
5 giving Mr. Waterhouse these two promissory notes after  
6 they were prepared?

7           A.    I specifically don't remember walking into  
8 his office and providing it to him, but he could have  
9 found it on our shared drive if he wanted to.

10          Q.    Do you have any memory or in your recent  
11 review of documents did you see any email to the effect  
12 of you sending either or both of these promissory notes  
13 to Mr. Waterhouse after they were papered up?

14          A.    I don't have any specific recollection,  
15 again, but he had access to look at them.

16          Q.    On the shared drive?

17          A.    Yes.

18          Q.    In May -- I'm going to ask this question  
19 multiple different ways, so let's start with kind of  
20 the general.

21                In May or by May of 2019, was there a  
22 repository, electronic or paper, where the debtor kept  
23 original promissory notes that were owed -- where money  
24 was owed to it?

25          A.    Original meaning paper?

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1 Q. Well, let's go back a little bit in time.

2 Would you agree that at some point prior to  
3 2019 the standard course was that paper notes were ink  
4 signed?

5 MR. MORRIS: Objection to the form of the  
6 question.

7 THE WITNESS: I could not tell you  
8 specifically when notes were or were not ink signed.

9 Q. (BY MR. RUKAVINA) Was there any repository,  
10 to the best of your recollection, as of May 2019 where  
11 any ink-signed original promissory notes were kept by  
12 the debtor?

13 A. No. We always would scan them in, save them  
14 on our shared drive. Never had paper copies.

15 Q. So that's -- fixing to ask that question  
16 next.

17 So Exhibits 4 and 5, would they even have  
18 been printed after they were papered up?

19 MR. MORRIS: Objection to the form of the  
20 question.

21 THE WITNESS: Possibly. Somebody could have  
22 printed them.

23 Q. (BY MR. RUKAVINA) Do you remember printing  
24 Exhibits 4 or 5 sitting here today?

25 A. I don't recall printing them myself, no.

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1 Q. Would there have been a reason to print them  
2 out if, as you said, the notes were stored  
3 electronically?

4 MR. MORRIS: Objection to the form of the  
5 question.

6 THE WITNESS: There could be a reason. I  
7 don't recall that I for any reason printed these  
8 particular notes.

9 Q. (BY MR. RUKAVINA) So as of May 2019, is it  
10 your testimony that notes that were papered up by the  
11 corporate accounting group would have been saved  
12 electronically on the system and not kept by way of  
13 paper copies in some file?

14 A. Correct. That's right.

15 Q. This is additional metadata. And you  
16 understand I have a bit of an accent.

17 What are we on?

18 (Off the record.)

19 Q. (BY MR. RUKAVINA) Ms. Hendrix, Exhibit 8 is  
20 going to be additional metadata for the May 3, 2019,  
21 note that we've been looking at, and Exhibit 9 will be  
22 the same thing for the May 2 note that we've been  
23 looking at.

24 That's 8. That's 9.

25 (Whereupon, Exhibits 8 & 9 were marked for

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1 identification.)

2 Q. (BY MR. RUKAVINA) Ms. Hendrix, I'm going to  
3 represent to you again that my office has faithfully  
4 printed this metadata out without doctoring or changing  
5 anything, and I ask you to assume that. If I'm wrong  
6 on that, then your answers don't count.

7 Ma'am, as I look at these two documents, it  
8 says last modified by Kristin Hendrix.

9 Do you see that?

10 A. Yes.

11 Q. And that would have -- that could have only  
12 been you; correct, in that department?

13 A. I hope so, yes.

14 Q. Seeing these two documents, can you agree  
15 with me now that it was in fact you that papered up  
16 Exhibits 4 and 5?

17 MR. MORRIS: Objection. Asked and answered.

18 THE WITNESS: I would assume so since my name  
19 is on it, yes.

20 Q. (BY MR. RUKAVINA) Both of these documents  
21 say last printed -- I'm sorry. If you see related  
22 dates, it says last printed May 2, 2019, 11:27 A.M. Do  
23 you have any memory or any understanding as to why that  
24 date would be there or what last printed might mean?

25 A. I don't know why it says last printed the day

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1 before it was created. That doesn't make any sense. I  
2 have no idea.

3 Unless, the only thing I could think of is if  
4 we changed this template. When I say "this," the  
5 \$2.4 million loan, which was papered on the 2nd, and  
6 then used it for the next day for the template to  
7 update the date, possibly. I have no idea.

8 Q. Well, it may be -- and I understand that you  
9 don't have any memory; we're speculating a little bit.

10 It may be, looking at Exhibits 8 and 9, that  
11 the \$2.4 million note was printed on May 2, and then  
12 after having been used as the template for the  
13 \$5 million note, the \$5 million note would not have  
14 been printed.

15 Does that sound possible?

16 MR. MORRIS: Objection to the form of the  
17 question.

18 THE WITNESS: Sure, it could be possible.

19 Q. (BY MR. RUKAVINA) But you don't have any  
20 memory either way?

21 A. No. And when these were printed they're  
22 printed to PDF, I believe, is probably what that means.

23 Q. Okay.

24 We're going to switch gears a little bit now,  
25 if you want to make a pile of those exhibits.

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1 Obviously, you're welcome to use them anytime you need  
2 to, but I think we're done with those notes.

3 Going to hand you what we're going to mark as  
4 Exhibit 10, which is an email chain produced by the  
5 debtor.

6 And I don't know how anyone on the video will  
7 see it. I apologize. I'll have to send it to you  
8 later.

9 (Whereupon, Exhibit 10 was marked for  
10 identification.)

11 Q. (BY MR. RUKAVINA) Now, if you start with  
12 this email chain, it starts on November 19, 2020 from  
13 Jack Donohue to you, copying Mr. Seery and various  
14 others.

15 Do you see that?

16 A. Yes.

17 Q. And Mr. Donohue is asking you to provide him  
18 the financial records of HCMFA due to the funds owed  
19 the debtor.

20 Do you see that?

21 A. Yes.

22 Q. Do you recall that email from Mr. Donohue to  
23 you?

24 A. Yes.

25 Q. Do you recall any context or subsequent

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1 discussions or how that email came to be, or do you  
2 just recall getting that email?

3 A. I just recall getting the email.

4 Q. You write back, hi Jack, Scott Ellington is  
5 going to follow up with the board on this request.

6 Do you see that?

7 A. Yes.

8 Q. Do you recall why you told Jack that  
9 Mr. Ellington was going to follow up?

10 A. From what I recall, I had asked Frank  
11 Waterhouse if it was okay to send these financials  
12 over, and he wanted me to check with Scott Ellington  
13 and that was Scott's response.

14 Q. And did he tell you why he wanted you to  
15 check with Scott Ellington?

16 A. Just to make sure that there were no issues  
17 with sending them over.

18 Q. Mr. Seery writes back, can I get this ASAP.  
19 HCMFA is way overdue.

20 Do you see that?

21 A. Yes.

22 Q. And Mr. Seery writes again, it's about a week  
23 later, and he says, this is an explicit direction from  
24 me as CEO of HCMLP. But it looks like you are the  
25 recipient of that December 2 email; correct?



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1 A. Yes.

2 Q. Do you remember him sending you that email  
3 and copying those people?

4 A. Yes.

5 Q. Do you remember anything happening in that  
6 week between his November 25 and December 2 email along  
7 the same discussion lines?

8 A. I don't remember anything. I think I was  
9 probably left out of any discussions, and if there were  
10 any, it was with Scott Ellington and whomever he had  
11 discussions with.

12 Q. Then subsequent, on December 2, Mr. Seery  
13 writes, all, Scott and I have spoken and agree that the  
14 information should be provided to James immediately.

15 Would that have been James Romey, do you  
16 think?

17 A. Yes.

18 Q. And who was James Romey?

19 A. He also worked for DSI.

20 Q. And then he writes, Kristin, please proceed  
21 with James. If anyone has any questions or issues,  
22 please call me.

23 Do you see that?

24 A. Yes.

25 Q. Did you proceed with James Romey?

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1           A.     I further made sure that Scott was okay, to  
2 confirm. He said yes, please do, and I did send them  
3 to James Romey.

4           Q.     So Mr. Seery has some of it in this email  
5 chain, but do you have any understanding as to why  
6 either DSI or Mr. Seery in November of 2020 was asking  
7 for the financial records of HCMFA?

8           A.     I do not, other than what's in this email.

9           Q.     Did you discuss with either DSI or Mr. Seery  
10 or Mr. Waterhouse in November or December 2020 whether  
11 the demand notes from HCMFA should be demanded, should  
12 be called?

13          A.     I did not have discussions.

14          Q.     Next exhibit is Exhibit 11. This is another  
15 email chain.

16                   And I apologize to the folks on the video.  
17 I'll have to get it to you during some break.

18                   MR. MORRIS: Hold on one second.

19                   MR. RUKAVINA: Sure. Off the record.

20                   (Off the record.)

21                   (Whereupon, Exhibit 11 was marked for  
22 identification.)

23          Q.     (BY MR. RUKAVINA) Exhibit 11, Ms. Hendrix,  
24 if you'll go to the beginning of this email chain, is  
25 an email on January 6, 2021, again from Mr. Donohue to

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1 you, copying Waterhouse, Seery, a bunch of others.

2 Where he says, at the direction of Jim Seery,  
3 please provide DSI with the requested information for  
4 each entity below.

5 And you'll see the entity includes both of my  
6 clients, NexPoint Advisors and HCMFA. And the  
7 information includes bank statements, income  
8 statements, balance sheets, cash flows.

9 Do you see that?

10 A. Yes.

11 Q. Do you recall this email?

12 A. Vaguely, yes.

13 Q. Did you have any concerns when you received  
14 this email?

15 A. Concerns about the email, no. I probably  
16 checked with -- I would have checked with Frank to make  
17 sure it was okay to send this first.

18 Q. Frank Waterhouse?

19 A. Yes.

20 Q. Do you have any understanding as to why  
21 Mr. Donohue requested bank statements, income  
22 statements, balance sheets for NexPoint and/or HCMFA?

23 A. I do not.

24 Q. Did he or anyone at DSI tell you why they  
25 were requesting that?

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1 A. Not that I can recall.

2 Q. If we go forward in time, you'll see that  
3 Mr. Waterhouse is writing back to Mr. Donohue. And  
4 then Mr. Seery interjects and says, these are HCMLP  
5 business records. Please provide them as requested by  
6 Jack ASAP.

7 Do you see that?

8 A. Yes.

9 Q. And it looks like you were not privy to  
10 subsequent communications where Frank and Jim were  
11 talking back and forth about this. You were not privy  
12 to those, like you weren't blind copied or anything to  
13 your recollection?

14 A. No.

15 Q. Did you in fact on or after January 6, 2021,  
16 provide Mr. Donohue or anyone on his team the  
17 information that he had requested as it relates to  
18 NexPoint and/or HCMFA?

19 A. Without going back to check, I couldn't  
20 answer yes or no for certain.

21 Q. So I think you mentioned when you received  
22 the email from Mr. Donohue you would have checked with  
23 Frank. And what do you remember asking Frank or  
24 checking with him about?

25 A. I don't remember asking him specifically. In

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1 fact, it's possible that Frank just responded on his  
2 own here to Jack. Again, would have been a  
3 conversation that I can't specifically recall.

4 Q. Sure. And you don't specifically remember  
5 today providing Mr. Donohue any of that information;  
6 right?

7 A. Right.

8 Q. You don't specifically remember today having  
9 a discussion with Mr. Donohue or Seery or anyone else  
10 at or about that time as to why they were wanting this  
11 information?

12 A. Correct.

13 Q. Exhibit 12, Ms. Hendrix, is going to be the  
14 December 3, 2020, letter by which Highland called the  
15 notes.

16 MR. MORRIS: Objection to the form of the  
17 question if there was one.

18 (Whereupon, Exhibit 12 was marked for  
19 identification.)

20 Q. (BY MR. RUKAVINA) Are you familiar with  
21 Exhibit 12, Ms. Hendrix?

22 A. No, I haven't seen this.

23 Q. Prior to today, you don't remember seeing  
24 this?

25 A. No.

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1 Q. I think you're answering no?

2 A. No, sorry, no.

3 Q. On or before December 3, 2020, did anyone  
4 discuss with you whether Highland should call the  
5 demand notes that were outstanding by HCMFA?

6 A. No.

7 Q. Do you recall in December 2020 any discussion  
8 with anyone at the debtor about the NexPoint  
9 \$30.7 million term note?

10 A. Repeat your question again, please.

11 Q. Sure. So you're familiar, and we'll talk  
12 about it in some detail, with the NexPoint  
13 \$30.7 million note?

14 A. Yes.

15 Q. And again, we'll talk about it, but at that  
16 point in time that was a term note; correct?

17 A. Correct.

18 Q. Do you remember in the December 2020 or  
19 November 2020 time frame discussing with anyone at the  
20 debtor the status of that NexPoint note?

21 A. Yes, we would have discussed this on a weekly  
22 basis in our cash meetings that we would have had, as  
23 identifying that there are payments due on these loans  
24 in December.

25 Q. What weekly cash meetings are you referring

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1 to?

2 A. We had a standing weekly cash meeting with  
3 Frank Waterhouse, myself, Jim Seery. I can't recall  
4 everyone on it. Some of the DSI folks. We go through  
5 cash forecasts. It's a 13-week cash forecast. We go  
6 through it every week.

7 It's going to lay out incoming and outgoing  
8 payments that are forecasted, of which these term loans  
9 were in those forecasts, so they were discussed.

10 Q. And Mr. Morris produced some of those to me  
11 this morning. I haven't had time to go through them.

12 But it is your recollection in November and  
13 December of 2020 the fact of the NexPoint term note  
14 being out there was known to Mr. Seery?

15 A. Yes.

16 Q. And the fact of an upcoming December 31,  
17 2020, payment was known to Mr. Seery?

18 A. Yes.

19 Q. So with that background, in November and  
20 December of 2020, do you remember discussing with  
21 anyone anything to the effect of, oh, it really would  
22 be better if NexPoint defaulted on that note so we  
23 could call it?

24 A. No.

25 Q. Did Mr. Seery ever state to you anything in

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1 November or December of 2020 about how the debtor might  
2 monetize that NexPoint note?

3 A. No.

4 Q. Did he discuss with you any potential sale of  
5 that promissory note?

6 A. No.

7 Q. Did DSI ever discuss with you in November or  
8 December 2020 any potential sale of that note?

9 A. No.

10 Q. Or how to monetize that note?

11 A. No.

12 Q. So -- well, strike that.

13 Did Mr. Seery or anyone at DSI, or anyone at  
14 all, in November or December of 2020 state any words to  
15 you to the effect that they were hoping that NexPoint  
16 would default on that note?

17 A. Never.

18 Q. Or that it would be in the debtor's interest  
19 for NexPoint to default on that note?

20 A. No.

21 Q. In November or December of 2020, do you  
22 recall having any discussions with Mr. Seery or anyone  
23 at DSI as to the collectibility of that note? And by  
24 that I mean whether NexPoint can pay the note?

25 A. I don't specifically recall. It most likely



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1 came up in cash conversations.

2 Q. I think you were assistant controller back  
3 then?

4 A. Yes.

5 Q. Would a discussion of a borrower's ability to  
6 repay have been something within your general sphere of  
7 responsibility in that time frame?

8 MR. MORRIS: Objection to the form of the  
9 question.

10 THE WITNESS: It depends on who the borrower  
11 is, and at that time we did -- we had knowledge over  
12 that information, so yes.

13 Q. (BY MR. RUKAVINA) Well, you've seen some  
14 instructions or requests from Mr. Seery to you and DSI  
15 to you for financial information of NexPoint and HCMFA.  
16 We've gone through those documents; right?

17 A. Yes.

18 Q. Does that refresh your memory that there was  
19 any internal discussion that you were privy to about  
20 the ability of HCMFA and/or NexPoint to pay these  
21 notes?

22 A. I don't recall that specifically being asked.  
23 It could have.

24 Q. Did you ever at any point in time have any  
25 employment or officer or any title or role with

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1 NexPoint Advisors, LP?

2 A. No.

3 Q. Were you ever the controller or assistant  
4 controller for NexPoint Advisors LP?

5 A. No.

6 Q. Did you ever at any point in time have any  
7 employment, officer or any title or role at HCMFA?

8 A. No.

9 Q. Were you ever the controller or assistant  
10 controller of HCMFA?

11 A. No.

12 Q. So you might have indirectly provided  
13 services to those two as part of shared services, but  
14 never directly; is that fair?

15 MR. MORRIS: Objection to the form of the  
16 question.

17 THE WITNESS: When you say never directly,  
18 meaning I was not employed by those entities?

19 Q. (BY MR. RUKAVINA) Correct.

20 A. That's correct.

21 Q. Do you have any understanding -- first of  
22 all, NexPoint did not make a payment on December 31,  
23 2020; correct?

24 A. Correct.

25 Q. Okay. Do you have any understanding of why

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1 not?

2 A. Yes.

3 Q. What's your understanding?

4 A. Either November 30 or December 1, 2020, I  
5 received a phone call from Frank Waterhouse that said,  
6 no payments are going from any of the Advisors to  
7 Highland.

8 Q. Can you be more specific with what he said?

9 A. That's what he said.

10 Q. So he said no payments from the Advisors to  
11 Highland?

12 A. Yes.

13 Q. Did he reference the promissory note  
14 expressly?

15 A. No.

16 Q. But no payments means?

17 A. Nothing.

18 Q. That would logically in your mind include the  
19 promissory note?

20 A. Yes.

21 Q. Did you ask him why?

22 A. No.

23 Q. Did he tell you why?

24 A. No.

25 Q. Did you, prior to January 1, 2021, did you

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1 hear from anyone as to why Mr. Waterhouse gave that  
2 instruction?

3 A. Not that I recall.

4 Q. Did you, after that November 30 or December 1  
5 phone call, did you follow up with him or anyone else  
6 about the upcoming note payment?

7 A. I didn't have any reason to.

8 Q. I'm going to -- let me find you a document  
9 for a moment.

10 Just so the record is complete, let's include  
11 this promissory note. It's going to be Exhibit 13.  
12 This is the NexPoint promissory note.

13 (Whereupon, Exhibit 13 was marked for  
14 identification.)

15 Q. (BY MR. RUKAVINA) I take it you've seen this  
16 promissory note, Exhibit 13?

17 A. Yes.

18 Q. And I think you testified about this before,  
19 but just to summarize to save time.

20 This would have been a note that you would  
21 not have papered but would have gone through legal  
22 because it was a roll-up. Is that generally accurate?

23 A. Yes.

24 Q. And do you have any memory at all of having  
25 anything to do with papering up this loan?

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1 A. Not that I recall.

2 Q. Would you have had, after 2017 and before  
3 2021, any role with respect to any payments or upcoming  
4 payments on this note, any role at all?

5 A. Yes.

6 Q. What would have been your role or roles?

7 A. That would have been taking direction from  
8 Frank Waterhouse or possibly Jim Dondero saying, go  
9 ahead and make these payments that are due on these  
10 term notes.

11 Q. Would you have recorded on any books or  
12 records payments that actually were made?

13 A. Not me personally.

14 Q. Who would have?

15 A. Our accountant, which could have been one of  
16 two different people, depending on the time frame.

17 Q. Would you have had any role with respect to  
18 recording those payments or is that just something that  
19 your group would have done?

20 MR. MORRIS: Objection to the form of the  
21 question.

22 THE WITNESS: I would not have had a role.  
23 My group would have.

24 Q. (BY MR. RUKAVINA) What about calculating  
25 amortization and/or interest payments that are due or

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1 upcoming? Who would have done that, you or someone  
2 else?

3 A. Our accountant.

4 Q. Do you have any memory of doing that?

5 MR. MORRIS: Objection to the form of the  
6 question.

7 THE WITNESS: Not during 2017 through 2019.

8 Q. (BY MR. RUKAVINA) What about 2020?

9 A. No.

10 Q. Going back to that November 30 or December 1  
11 telephone call, do you recall who initiated the call?

12 A. To me?

13 Q. The one between you and Mr. Waterhouse.

14 A. Frank called me.

15 Q. Frank called you.

16 And was it just to discuss -- or just to give  
17 you that instruction, no payments from the Advisors, or  
18 was there other things discussed?

19 A. I could not tell you if something else was  
20 discussed on that phone call.

21 Q. Do you remember if it was a long phone call  
22 or short?

23 A. Couldn't tell you.

24 Q. Do you remember where you were when he called  
25 you?

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1 A. At my house.

2 Q. Did you answer on a cell phone or landline?

3 A. My cell phone.

4 Q. Is there any chance in hell that your cell  
5 phone would still have a record of that phone call,  
6 like what time it was and how long it lasted?

7 MR. MORRIS: Objection to the form of the  
8 question.

9 Q. (BY MR. RUKAVINA) I apologize for using  
10 hell.

11 MR. MORRIS: And to foundation.

12 THE WITNESS: I have no idea.

13 Q. (BY MR. RUKAVINA) Do you have your cell  
14 phone with you right now?

15 A. In the other room.

16 Q. I might ask you during the break to just --  
17 we'll take a short break before I'm done, and I'll ask  
18 you if you've had a chance to look for November and  
19 December 2020 phone logs between you and  
20 Mr. Waterhouse. I would ask you to do that, please.

21 A. Sure.

22 Q. And I apologize, I think you said you thought  
23 it was a short telephone call?

24 A. I have no idea.

25 Q. Did the telephone call or Mr. Waterhouse's

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1 instructions surprise you in any way?

2 A. Nothing surprises me anymore, so no.

3 Q. Did it surprise you back in November or  
4 December of 2020?

5 A. No.

6 Q. Did it pique your curiosity?

7 A. Nope.

8 Q. Just another instruction from your boss?

9 A. Yep.

10 Q. Exhibit 14 is going to be a document that  
11 we're not sure what it is and we're not sure who  
12 prepared it. It appears to be a ledger of charges  
13 against and payments on this promissory note.

14 I'm just saying that so the people on the  
15 phone know what it is, but you don't have to take what  
16 I said as correct.

17 (Whereupon, Exhibit 14 was marked for  
18 identification.)

19 Q. (BY MR. RUKAVINA) So Ms. Hendrix, Exhibit 14  
20 was produced by the debtor. And I'm going to ask you,  
21 do you know what this is or have you seen it before?  
22 Can you help us state what it is?

23 A. This looks like it is an amortization  
24 schedule of the NexPoint Advisors term loan.

25 Q. Would this have been something that it



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1 appears to you would have been maintained internally by  
2 the debtor, or does it look like it might have been  
3 prepared by DSI or someone else for some other reason?

4 A. It looks like the debtor's amortization  
5 schedule that they kept.

6 Q. Did the debtor keep an amortization schedule  
7 for the NexPoint promissory note, to your knowledge?

8 A. Yes.

9 Q. Did the debtor keep amortization schedules  
10 for other term promissory notes?

11 A. Yes.

12 Q. In what format, like Excel spreadsheets or  
13 Word documents? What is your recollection for NexPoint  
14 specifically?

15 A. Excel.

16 Q. Would that have been on the shared system or  
17 something?

18 A. Yes.

19 Q. And who would have been responsible on an  
20 ongoing basis to update the NexPoint amortization  
21 schedule?

22 MR. MORRIS: Objection to the form of the  
23 question.

24 THE WITNESS: Depends on what time you're  
25 asking.

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1 Q. (BY MR. RUKAVINA) Let's talk about the year  
2 of 2020.

3 A. That would have been Hayley Eliason, our  
4 accountant at that time.

5 Q. What about the year 2019?

6 A. Still Hayley.

7 MR. RUKAVINA: I'm going to just ask, to  
8 preserve the record, Mr. Morris, if he hasn't already,  
9 to produce any such Excel spreadsheet in the native  
10 form.

11 Q. (BY MR. RUKAVINA) If we look at this,  
12 Ms. Hendrix -- and I'm a little confused as to what  
13 these entries mean. Maybe you could help me. But  
14 columns that say interest paid, principal paid, total  
15 paid, do you know what those columns mean?

16 A. Exactly as they state. These are interest  
17 and principal payments made on the date that's listed,  
18 and then you've got a total.

19 Q. And then they're in brackets because they're  
20 negative numbers?

21 A. Correct.

22 Q. So here's what I'm not understanding. Go to  
23 the second page.

24 You see there's an entry under interest paid  
25 12/30/29 [verbatim] that says negative 530,000 and

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1 change but it doesn't use brackets?

2 A. It's a negative number. It's just a  
3 formatting issue.

4 Q. What about also on that same page in the  
5 other column, principal paid, 5/31/2020, it's a  
6 positive number, 575,550.

7 MR. MORRIS: Where are you?

8 MR. RUKAVINA: On page 2 of this exhibit.

9 MR. MORRIS: What date?

10 MR. RUKAVINA: May 31, 2020. And it's the  
11 column over, principal paid. It's a positive number,  
12 575,000 and change.

13 MR. MORRIS: Got it, thank you.

14 Q. (BY MR. RUKAVINA) Do you see that,  
15 Ms. Hendrix?

16 A. Yes.

17 Q. Do you have an understanding of why that  
18 number would be positive?

19 A. Actually, I think this looks like an entry to  
20 me where the interest is what we call picking. So on  
21 the anniversary date of this loan, which is May, from  
22 what I can tell, the accrued interest total, which is  
23 that 575-, is being rolled into principal.

24 That's what I can tell from looking at it.

25 Q. Okay. Do you have any understanding as to

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1 why that would have been done or why that would have  
2 been done on that day?

3 MR. MORRIS: Objection to the form of the  
4 question.

5 THE WITNESS: Because that's the anniversary  
6 date of the loan. I would assume that that's how the  
7 loan is written.

8 Q. (BY MR. RUKAVINA) And I think that that  
9 Section 1 of the promissory note does say, the unpaid  
10 principal balance of this note from time to time  
11 outstanding shall bear interest.

12 At the rate of 6 percent per annum from the  
13 date hereof until maturity date, compounded annually on  
14 the anniversary of the date of this note.

15 Do you see that?

16 MR. MORRIS: Objection to the form of the  
17 question.

18 THE WITNESS: Yeah, I see that.

19 Q. (BY MR. RUKAVINA) Assuming that this is the  
20 correct amortization schedule for the NexPoint note,  
21 and that the numbers in here are correct, if you look  
22 at the second page under the column total paid there  
23 are a number of entries for 2019.

24 Do you see that, the far right column?

25 A. At the top, yes.

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1 Q. For example, 1.3 million, 2.1 million,  
2 1.3 million.

3 Do you see that?

4 A. Yes.

5 Q. Assuming that that's correct, do you have any  
6 memory or understanding whether in the year 2019, or  
7 why NexPoint was making these payments on this  
8 promissory note?

9 A. Without going back and reading through emails  
10 I can only assume that, from looking at this, Highland,  
11 the debtor, would have needed cash, and so this is one  
12 way of getting cash to the debtor.

13 Q. This is kind of like what we discussed in the  
14 beginning, that Mr. Dondero on a cash needed basis  
15 would just transfer money between entities?

16 A. Yes.

17 Q. Do you have any memory in the first half of  
18 2019 whether Highland, the debtor, had any particular  
19 need for cash money at that time?

20 A. We generally always had a need for cash, so  
21 yes.

22 Q. And so if NexPoint was transferring money  
23 back to Highland on this note because Highland needed  
24 the money, would those have been recorded as  
25 prepayments by the debtor?

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1 MR. MORRIS: Objection to the form of the  
2 question.

3 THE WITNESS: Yes.

4 Q. (BY MR. RUKAVINA) Sitting here today, do you  
5 have any reason to believe based on the formatting or  
6 anything on Exhibit 14 that it's not the amortization  
7 schedule as it was maintained by the debtor?

8 A. I don't have any reason to not believe that  
9 it was.

10 Q. Going to show you a few documents that I'm  
11 hopefully going to burn through, but you're certainly  
12 entitled to take all the time that you need.

13 So first is going to be a document that  
14 Mr. Morris produced this morning. It's not Bates  
15 labeled. I don't know why.

16 MR. MORRIS: As I said in my email, my  
17 paralegal is sick and so I wanted you to have the  
18 documents. We'll Bates stamp them later, but we have a  
19 written record from my email of what we produced to  
20 you.

21 MR. RUKAVINA: You're assuming that I read my  
22 emails.

23 MR. MORRIS: Sorry about that. I confess,  
24 sometimes I don't as well.

25 Q. (BY MR. RUKAVINA) So I'm going to hand you

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1 Exhibit 15 and I'm going to represent to you that it's  
2 the email that Mr. Morris sent to me today and I've not  
3 doctored it in any way.

4 (Whereupon, Exhibit 15 was marked for  
5 identification.)

6 MR. MORRIS: Do you have the email that it  
7 was attached to?

8 MR. RUKAVINA: Somewhere. I can find it at a  
9 break.

10 MR. MORRIS: I'll let the witness testify.  
11 This was attached to an email. Not my email, but  
12 another email. But I'll let the witness testify.

13 MR. RUKAVINA: Off the record.

14 (Off the record.)

15 Q. (BY MR. RUKAVINA) So you have Exhibit 15.

16 And during the break we established, I don't  
17 have a copy of it right now, but you sent Exhibit 15 on  
18 August 29, 2020, to Mr. Dondero by email, copying  
19 Mr. Waterhouse, as well as a couple of other  
20 attachments; is that correct?

21 A. Correct.

22 Q. Do you recall what prompted you to send that  
23 email and this attachment?

24 A. Yes.

25 Q. What?

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1           A.     Frank Waterhouse called me on August 29, and  
2 requested that I do so.

3           Q.     Did he tell you why?

4           A.     From what I recall, this was a time when Jim  
5 was trying to come up with his bargain or pop land,  
6 whatever he referenced it as. This was all information  
7 that Frank said he wanted.

8           Q.     Okay. So going back to Exhibit 15, what I'm  
9 interested in is NexPoint Advisors, the 23,846,000 and  
10 change number.

11                   Do you see that?

12           A.     Yes.

13           Q.     Where did that number -- or where did this  
14 Exhibit 15 come from, if you understand my question?

15           A.     Sure. These numbers should all be balances  
16 off of the corresponding notes that each entity owed to  
17 the debtor.

18           Q.     Did you or someone prepare Exhibit 15  
19 specifically for that email? Or was Exhibit 15 already  
20 existing somewhere on the system?

21           A.     I believe that we prepared it specifically  
22 for this request.

23           Q.     Do you recall who?

24           A.     It was either myself or our accountant. I  
25 don't recall who put it together.



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1 Q. Okay. And where would that 23 million and  
2 change number for NexPoint have come from, an  
3 amortization schedule?

4 A. Yes.

5 Q. And what about Highland Capital Management  
6 Fund Advisors? You see \$10.5 million and change demand  
7 on Exhibit 15?

8 A. Yes.

9 Q. Where would that \$10.5 million number have  
10 come from, do you remember?

11 A. The same. It would have come off of the  
12 amortization schedules for all of their notes.

13 Q. How was there an amortization schedule for a  
14 demand note?

15 A. Because it's accruing interest.

16 Q. So sitting here today, you expect there would  
17 be some amortization schedule like Exhibit 14 but for  
18 HCMFA?

19 A. Yes.

20 Q. Now we're going to have an exhibit [verbatim]  
21 chain that's going to be marked as Exhibit 16.

22 (Whereupon, Exhibit 16 was marked for  
23 identification.)

24 MR. RUKAVINA: For the folks on the video,  
25 Exhibit 16 is the email chain that Mr. Morris used last

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1 week regarding the Section 15(c) document.

2 Q. (BY MR. RUKAVINA) Are you familiar with this  
3 Exhibit 16 email chain, Ms. Hendrix?

4 A. Yes.

5 Q. Why are you familiar with it?

6 A. Well, I'm copied on it, and I saw it  
7 yesterday.

8 Q. Do you have any memory -- well, that's a  
9 stupid question. But prior to yesterday, did you have  
10 any memory of this?

11 A. Yes.

12 Q. And do you recall the context or the purpose  
13 of this exhibit, or this email chain?

14 A. From what I remember this is the time where  
15 information was being prepared for the retail board to  
16 re-up the debtor's shared services.

17 Q. So, here -- you're certainly welcome to read  
18 it in its entirety and if you feel like you want to or  
19 need to, that's fine. But I only have one question.  
20 Well, one question with two subparts.

21 I'm looking at Ms. Lauren Thedford's,  
22 T-h-e-d-f-o-r-d's, email October 6, 2000 [verbatim]  
23 where she says, I see the below from the 6/30  
24 financials. NPA, due to HCMLP and affiliates as of  
25 June 30, 2020.

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1 Do you see that, ma'am?

2 A. Yes.

3 Q. 23 million 683?

4 A. Yes.

5 Q. And you see, HCMFA due to HCMLP as of  
6 June 30, 2020, 12,286,000?

7 MR. MORRIS: Objection to the form of the  
8 question.

9 Q. (BY MR. RUKAVINA) Strike that.

10 It says 12,286. What do you take that 12,286  
11 to mean?

12 A. I think that's a typo and it should have  
13 said -- well, there's several things wrong with this,  
14 from looking at it.

15 She left off three zeros on the end of it.  
16 Should have said 12,286,000. Secondly, that amount is  
17 our due to affiliates on HCMFA's books, not just due to  
18 HCMLP.

19 Q. That was going to be my question, why that  
20 12,286,000 number didn't jive with the 10,530,000  
21 number on Exhibit 15?

22 A. Yes, there's another loan due to a different  
23 affiliate.

24 Q. So that \$12,286,000 amount doesn't mean that  
25 it's all due to Highland; is that correct?

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1 A. Correct.

2 Q. Exhibit 17 is going to be the January 7, 2021  
3 notice from the debtor to NexPoint about the default.

4 (Whereupon, Exhibit 17 was marked for  
5 identification.)

6 Q. (BY MR. RUKAVINA) You've been handed  
7 Exhibit 17. Have you seen this document before?

8 A. Not that I believe.

9 Q. And I think we've asked this before, but just  
10 to clarify.

11 Did anyone at the debtor, including Mr. Seery  
12 or DSI, discuss with you after December 31, 2020 that  
13 the payment had not been made and what, if anything,  
14 the debtor should do about that?

15 MR. MORRIS: Objection to the form of the  
16 question.

17 THE WITNESS: I can't recall specific  
18 conversations that may or may not have been had around  
19 that topic.

20 Q. (BY MR. RUKAVINA) Would -- so back then you  
21 were the assistant controller, on January 7; right?

22 A. Yes.

23 Q. Do you think that back then Mr. Seery or DSI  
24 would have sought your advice or input as to what they  
25 should do about the missed payment?

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1 A. No.

2 MR. MORRIS: Objection to the form of the  
3 question.

4 THE WITNESS: No.

5 Q. (BY MR. RUKAVINA) That would have been  
6 outside of your purview?

7 A. Yes.

8 Q. And you see in this notice in the middle, it  
9 says an amount due as of January 8 in the \$24,471,000  
10 range.

11 Do you see that?

12 A. Yes.

13 Q. Do you have any idea, I take it you don't,  
14 where that number came from?

15 MR. MORRIS: Objection to the form of the  
16 question.

17 THE WITNESS: I don't know who provided that  
18 number or where it came from.

19 Q. (BY MR. RUKAVINA) Do you have any  
20 understanding as to why that number is higher than the  
21 number on Exhibit 15?

22 A. My guess would be that Exhibit 15 is just  
23 principal balances.

24 Q. Okay.

25 Exhibit 18, please.

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1 (Whereupon, Exhibit 18 was marked for  
2 identification.)

3 Q. (BY MR. RUKAVINA) Exhibit 18, Ms. Hendrix,  
4 is an email chain between you and Mr. Waterhouse on  
5 January 12, 2021. Do you remember this email chain?

6 A. No.

7 Q. Do you remember on January 12 Mr. Waterhouse  
8 emailing you, asking when the last amort payment due  
9 and what the amount was for NexPoint?

10 A. No.

11 Q. When was the last time -- well, strike that.  
12 Do you remember ever seeing this email  
13 between then and today?

14 A. No.

15 Q. Do you have any present memory of any  
16 communications with Mr. Waterhouse on or about  
17 January 12, 2021 regarding the NexPoint default or  
18 note?

19 A. Not specific, no.

20 Q. Any general memory?

21 A. Not that I can pinpoint, no.

22 Q. Were you aware that on or about January 14  
23 NexPoint transferred about \$1.4 million and change to  
24 the debtor?

25 A. Yes.

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1 Q. Were you aware of it then?

2 A. Was I aware of what?

3 Q. That transfer of \$1.4 million and change.

4 A. On January 14?

5 Q. Yes.

6 A. Yes.

7 Q. Did you facilitate that transfer?

8 A. Yes.

9 Q. Who told you to make that transfer?

10 A. Frank Waterhouse.

11 Q. Did he tell you why?

12 A. Nope.

13 Q. He just said make the transfer?

14 A. Yes.

15 Q. Did he tell you that it was on account of the  
16 NexPoint note?

17 A. Yes.

18 Q. Did he tell you how to, if at all, to credit  
19 that note for that amount?

20 A. No.

21 Q. Sitting here today, you have no memory other  
22 than that Frank Waterhouse told you to transfer some  
23 \$1.4 million on the NexPoint note?

24 A. Right.

25 Q. And do you recall, was that oral or written

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1 or how would that have been?

2 A. That was a phone call.

3 Q. Do you recall who initiated the phone call?

4 A. Frank called me.

5 Q. Was that the only topic discussed in that  
6 phone call to your memory?

7 A. Yes.

8 Q. Did you ask him why the payment or  
9 anything -- did you ask him anything at all?

10 A. No.

11 Q. And after you made the payment -- or I'm  
12 sorry, after you caused the payment to be made, did you  
13 take any further steps with respect to the NexPoint  
14 note?

15 A. I forwarded the payment confirmation, showing  
16 that the money was sent from NexPoint Advisors to  
17 Highland, forwarded that payment confirmation from the  
18 bank to Jack Donohue at DSI, letting him know.

19 Q. Did you let Mr. Donohue or anyone at DSI know  
20 about the transfer before the transfer was made?

21 A. No.

22 Q. And you sent that by email to Mr. Donohue?

23 A. Yes.

24 Q. Did Mr. Donohue thereafter have any  
25 discussion with you about that in any way?



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1 A. I have no idea.

2 Q. He didn't ask what this was for or anything  
3 like that?

4 A. He may have asked what the amount  
5 represented. I can't specifically recall. But it's  
6 possible.

7 Q. Okay. Do you recall any discussion about  
8 that time, January 14, with Mr. Donohue or  
9 Mr. Waterhouse or anyone as to whether that payment  
10 would in any way relieve NexPoint of the default or  
11 would not relieve NexPoint of the default?

12 A. No.

13 Q. Ms. Hendrix, I believe that I am done. I  
14 would like you, however, because it's important, to  
15 check your phone. Would you like a short, five-minute  
16 restroom break and just check --

17 A. Yeah, and I might need help figuring out how  
18 to do that.

19 Q. I'm not saying that it's possible, but I'm  
20 going to ask you on the record to look for that  
21 November 30 or December 1, 2020 phone call.

22 MR. MORRIS: We're happy to do that.

23 Q. (BY MR. RUKAVINA) But what I would like if  
24 you find it, I would like you to tell me the time, the  
25 date and the length of that call.

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1 A. Okay.

2 Q. Thank you.

3 We'll be back in five minutes.

4 (Off the record.)

5 Q. (BY MR. RUKAVINA) Ms. Hendrix, during the  
6 break did you look at your phone?

7 A. I did.

8 Q. Did you find anything?

9 A. Sadly, it only goes back to October 5 of  
10 2021.

11 Q. Not surprised. Thank you.

12 Have I been courteous to you today?

13 A. Yes.

14 MR. RUKAVINA: I pass the witness.

15 MR. MORRIS: Thank you.

16 MR. AIGEN: Are we ready to move forward?

17 MR. MORRIS: Yes. You're a little dark  
18 there.

19 MR. RUKAVINA: Can we increase the volume on  
20 that thing?

21 (Off the record.)

22 EXAMINATION

23 Q. (BY MR. AIGEN) Good afternoon, Ms. Hendrix.  
24 My name is Michael Aigen. I represent Mr. Dondero,  
25 HCMS and HCRE Partners in several of the adversary

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1 proceedings today.

2 I'm going to try to ask you some questions  
3 about these adversary proceedings. I'll try to make it  
4 as quick as possible so we don't keep you here.

5 You understand that you're still under oath;  
6 is that correct?

7 A. Correct.

8 Q. First topic I want to ask you about is one of  
9 the defenses in this case related to an oral agreement.  
10 Let me start off with this question.

11 Are you aware that some of the defendants in  
12 these adversary proceedings have raised a defense that  
13 there was a subsequent oral agreement allowing the  
14 notes at issue to be potentially forgiven if certain  
15 events occurred?

16 A. I've recently been made aware that this came  
17 up, yes.

18 Q. When you say recently, approximately when?

19 A. Within the last week.

20 Q. And where did you learn that from?

21 A. In my speakings with John Morris just  
22 preparing for today.

23 MR. AIGEN: And John, I'm going to assume  
24 that those conversations are privileged?

25 MR. MORRIS: That's a very fair assumption.

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1 Q. (BY MR. AIGEN) Other than the conversation  
2 you just referred to with Mr. Morris, have you ever had  
3 any other conversations with anyone about this alleged  
4 oral agreement that Defendants are contending occurred?

5 A. No.

6 Q. So prior to that conversation with Mr. Morris  
7 you weren't even aware of this alleged defense related  
8 to an oral agreement. Is that fair to say?

9 A. That's right.

10 Q. This is a similar question but slightly  
11 different, just to sort of finish this topic. I'm not  
12 asking about this oral agreement as a defense, I'm just  
13 asking more generally.

14 Other than this conversation, were you aware  
15 generally of any conversations that anyone had where  
16 the notes at issue might be forgiven if certain events  
17 occurred?

18 MR. MORRIS: Objection to the form of the  
19 question.

20 THE WITNESS: No.

21 Q. (BY MR. AIGEN) Is it fair to say that you  
22 haven't had any conversations about this subsequent  
23 oral agreement with anyone other than Mr. Morris?

24 A. That's fair.

25 Q. You never discussed it with Mr. Seery?

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1 A. No.

2 Q. Never discussed it with Mr. Klos?

3 A. No. Well, sorry, Mr. Klos was present when  
4 John and I talked about it. But that's it.

5 Q. Have you ever made any investigation or  
6 effort in order to determine if this oral agreement  
7 actually occurred?

8 A. No.

9 Q. If there was such an oral agreement to  
10 potentially forgive the notes, do you believe that you  
11 would have known about such an oral agreement as part  
12 of your duties and responsibilities?

13 A. Yes, I would hope so.

14 Q. Why do you say that?

15 A. That's something that should be disclosed in  
16 audited financial statements, and me and my team are  
17 responsible for preparing those financial statements  
18 and presenting them to the auditors as fair and  
19 accurate.

20 Q. And is it fair to say that this oral  
21 agreement should have been disclosed to PwC if it was  
22 determined that it was material?

23 A. Yes.

24 Q. And have you done any sort of analysis to  
25 determine whether the oral agreement at issue here

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1 would have been material for purposes of a PwC audit?

2 A. I've not done any work, just finding out  
3 about it, but from what it sounds like, it would be  
4 material.

5 Q. That's your opinion, that it would have been  
6 material; is that fair to say?

7 A. Fair.

8 Q. Have you had any discussions with anyone else  
9 about whether the oral agreement would have been  
10 material?

11 A. No.

12 Q. Changing topics a little bit here, are you  
13 aware --

14 (Off the record.)

15 Q. (BY MR. AIGEN) Are you aware that a few of  
16 the loans at issue here, specifically related to HCMS  
17 and HCRE, were term loans as opposed to demand loans?

18 A. Yes.

19 Q. And are you aware that for those particular  
20 loans, there were payments that were supposed to be  
21 made but weren't on December 31, 2020?

22 A. Yes.

23 Q. Do you have any understanding as to why those  
24 payments weren't made with respect to the HCMS and HCRE  
25 term loans on December 31, 2020?

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1 A. Yes.

2 Q. Can you tell me why?

3 A. Sure. It goes along with the same statement  
4 as HCMFA and NPA and the phone call that I got from  
5 Frank Waterhouse saying there's no payments coming from  
6 any of the affiliates to the debtor.

7 Q. I may have written that down wrong when you  
8 talked about that before, but I believe your earlier  
9 testimony when you described that conversation was that  
10 there was no more payments coming from the Advisors,  
11 not affiliates.

12 Let me ask you then, what was the  
13 conversation? Was it no more payments from affiliates  
14 or Advisors?

15 A. It could have been either. I probably did  
16 say Advisors. But regardless, those payments would  
17 have been directed to me to be made, either by Frank  
18 Waterhouse or Jim Dondero.

19 And I would assume that nobody directed me to  
20 make those payments because we weren't making any  
21 payments from Jim's related parties. I don't know for  
22 a fact, but that's what I would assume. Those were all  
23 under the same umbrella.

24 Q. And again, let's back up a second.

25 When you refer to Advisors, fair to say that

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1 that does not include HCMS and HCRE; is that correct?

2 A. When I say Advisors, I am referring to HCMFA  
3 and NPA.

4 Q. And when you use the term "affiliates,"  
5 you're referring to all four; is that correct?

6 A. Correct.

7 Q. Just want to make sure we're on the same  
8 page.

9 When you answered the previous question you  
10 started to get into assumptions and things like that.  
11 Let me start off with what your specific recollection  
12 of that phone call was. Tell me as best as you can  
13 what you remember Frank telling you?

14 A. I remember it as being no payments from the  
15 Advisors to the debtor.

16 Q. So you don't remember the instruction being,  
17 don't make payments from the affiliates. It was, don't  
18 make payments from the Advisors; is that correct?

19 A. Correct.

20 Q. So is it fair to say that you don't remember  
21 any instructions telling you not to make any payments  
22 from HCMS or HCRE?

23 A. That's fair.

24 Q. So if that is the case, why weren't payments  
25 made from HCMS or HCRE for December 31, 2020, payment?



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1           A.     Sure. Typically what would have happened is  
2 Frank would be talking to Jim Dondero about making  
3 these payments and getting his approval to do so,  
4 because Jim Dondero is, you know, directing payments  
5 out of these entities.

6                     I have never -- had never been given the  
7 direction to effectuate those payments by anybody.

8           Q.     Is it fair to say, then, that you're not  
9 aware of any instructions from anyone saying that the  
10 HCMS and HCRE payments should not be made on  
11 December 31, 2020?

12          A.     That's fair.

13          Q.     So the reason the payments weren't made is  
14 because you never got an affirmative instruction to  
15 actually make that payment; is that correct?

16          A.     Correct.

17          Q.     And you're not aware of Mr. Dondero  
18 instructing anyone that HCMS and HCRE should not have  
19 made the December 31, 2020, payments; is that correct?

20          A.     I'm not aware personally, no. Correct.

21          Q.     You say personally. In any way are you aware  
22 of such a specific instruction?

23          A.     No.

24          Q.     If that payment was to be made, who at the  
25 debtor would have been responsible for making those

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1 payments on behalf of HCMS and HCRE?

2 MR. MORRIS: Objection to the form of the  
3 question.

4 THE WITNESS: The corporate accounting team.

5 Q. (BY MR. AIGEN) And that included you?

6 A. Yes.

7 Q. And in December of 2020, were you aware that  
8 those payments were due on December 31, 2020?

9 A. Yes.

10 Q. Did you make any attempts or efforts to  
11 determine whether Mr. Dondero wanted those payments to  
12 be made?

13 A. I did not, no.

14 Q. Why not?

15 A. That would have been something that Frank  
16 Waterhouse would have done directly with Jim Dondero  
17 himself.

18 Q. Did you have any conversations with anyone  
19 about whether the December 31 payments for HCMS and  
20 HCRE would be made in December of 2020?

21 A. Not that I can recall.

22 Q. And you didn't think it was your  
23 responsibility to check on those payments and find out  
24 if they should have been made?

25 A. Right, correct.

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1 Q. And is that because it's only your job to  
2 make payments that you're told to specifically make; is  
3 that correct?

4 A. Yes, in this case, that is correct.

5 Q. Is it fair to say then that as part of your  
6 job responsibilities you've never made a payment to  
7 anyone without being specifically told by Mr. Dondero  
8 and Mr. Waterhouse?

9 A. Sorry, say that again.

10 Q. As part of your job responsibilities, have  
11 you ever made a payment to anyone without the specific  
12 instruction of Mr. Waterhouse or Mr. Dondero?

13 MR. MORRIS: Objection to the form of the  
14 question.

15 THE WITNESS: Yes, we make payments all the  
16 time.

17 Q. (BY MR. AIGEN) So why is this different in  
18 that this payment was not made without the specific  
19 instructions from Mr. Waterhouse and Mr. Dondero, even  
20 though you believed the payment was due on December 31,  
21 2020?

22 A. The difference between making a loan payment  
23 and making normal course -- or sorry, normal, ordinary  
24 course, you know, overhead expense payments is that  
25 something like that is not necessarily what we would

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1 take to Jim Dondero to approve.

2 He doesn't have time to approve every single  
3 overhead payment that we're making out of every single  
4 entity. That's what Frank is for.

5 Something that's once a year that's more  
6 material in amount, such as a loan payment, that is  
7 something that needs to get approved by Jim Dondero.

8 Q. You say needs to get approved. What's your  
9 basis for that, something in a policy manual, something  
10 someone told you?

11 A. It's a policy that my team followed. I don't  
12 think that it's written in an actual manual anywhere,  
13 but anything that's not ordinary course needs to get  
14 approved by Jim Dondero.

15 Q. Is that something that's written in a policy  
16 anywhere?

17 A. Not that I know of.

18 Q. Were you ever told that payments in the  
19 ordinary course can be made without Mr. Dondero's  
20 approval but loan payments cannot?

21 A. Yes, I do recall years ago that Frank and I,  
22 possibly Jim, this was years ago, had a conversation  
23 that anything ordinary course is up to Frank to  
24 approve. And this is, quite frankly, up to Frank.

25 Whatever he felt Jim needed to sign off on,

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1 that's what Jim would sign off on. This was not my  
2 responsibility to make that decision.

3 Q. And in December -- prior to the December 31,  
4 2020, due date you didn't have any conversations with  
5 anyone about whether this -- these payments that were  
6 due should be made; is that correct?

7 A. Correct.

8 Q. And you didn't try to check with anyone to  
9 see whether anyone wanted these payments to be made; is  
10 that correct?

11 A. Correct.

12 Q. Subsequent to the payment being missed, did  
13 you ever have any conversations with anyone about why  
14 the payment was not made?

15 A. Not that I recall.

16 Q. So is it fair to say that sitting here today  
17 you have no idea why the payments were not made for  
18 HCMS and HCRE on December 31, 2020?

19 MR. MORRIS: Objection to the form of the  
20 question.

21 THE WITNESS: I don't have any specific  
22 evidence telling me why they weren't. I can make  
23 assumptions but that's not going to help.

24 Q. (BY MR. AIGEN) Well, did you ever have any  
25 conversations with anyone about why those payments were

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1 not made?

2 A. No.

3 Q. You have no idea why they weren't made other  
4 than just speculation; is that fair to say?

5 A. Correct.

6 MR. MORRIS: Objection. Asked and answered.

7 THE WITNESS: Correct.

8 Q. (BY MR. AIGEN) And are you aware that with  
9 respect to those two loans, some payments were actually  
10 made in the next month, in January of 2021?

11 A. Yes.

12 Q. What role, if any, did you have with respect  
13 to those payments?

14 A. Frank Waterhouse would call me and tell me to  
15 have my team effectuate a wire.

16 Q. And you say would call you. Do you remember  
17 this conversation or are you just assuming it occurred?

18 MR. MORRIS: Objection to the form of the  
19 question.

20 THE WITNESS: If we sent a payment out, Frank  
21 would have told me to do it. I would not have done it  
22 on my own.

23 Q. (BY MR. AIGEN) Sitting here today, do you  
24 have a specific recollection of the conversation where  
25 someone told you to make the January 2021 payments?

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1           A.    I can't tell you the exact date, but, yes, I  
2 do have a recollection of Frank calling or emailing me  
3 to have, I believe it was the HCRE wire sent out for  
4 their payment.

5           Q.    What about the HCMS payment?

6           A.    I don't recall that one as much.

7           Q.    Other than the payment being made, do you  
8 have any recollection of any other conversations about  
9 why the payment was being made?

10          A.    No.

11          Q.    Are you aware of any conversations that  
12 anyone had regarding whether these payments would  
13 deaccelerate loans?

14          A.    No.

15          Q.    Is that something you would normally be part  
16 of, conversations like that?

17          A.    No.

18          Q.    Changing topics here. Not sure if this is an  
19 area that you know anything about.

20                Are you familiar with the term, as it's used  
21 at Highland, NAV ratio trigger period?

22          A.    No.

23          Q.    This may go very quick. If I represent to  
24 you that it's a term that's used in the -- in the  
25 fourth amended limited partnership agreement for

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1 Highland Capital Management, would that refresh your  
2 recollection at all?

3 A. No.

4 Q. Fair to say, then, that you have no knowledge  
5 as to whether NAV ratio trigger period was ever reached  
6 at any time prior to bankruptcy buyouts?

7 A. No, I don't know.

8 Q. Have you ever had any conversations with  
9 Nancy Dondero?

10 A. I have not.

11 Q. Never met her?

12 A. No. I may have exchanged an email with her  
13 on an invoice, but that's the extent of it. No  
14 conversations.

15 Q. In the years leading up to the bankruptcy of  
16 Highland Capital, was there any time period where  
17 Highland was unable to pay its salaries?

18 A. Salaries?

19 Q. Salaries of its employees?

20 A. No.

21 Q. In the time leading up to the Highland  
22 bankruptcy, was there any time period where Highland  
23 wasn't able to pay bonuses owed to any of its  
24 employees?

25 A. Not that I know of. Not that I can recall.



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1 Q. Are you aware of any time period leading up  
2 to the Highland bankruptcy where Highland was unable to  
3 pay its bills?

4 A. There's times where we would be in a cash  
5 flow crunch and we would stretch our AP, but eventually  
6 it would get paid.

7 Q. And I think this is the last topic and we can  
8 probably move through this pretty quickly.

9 Are you aware of any loans made by Highland  
10 to any of its employees or officers that were forgiven  
11 in part or all?

12 A. Yes.

13 Q. Which officers or employees are you aware of?

14 A. I recall there were two employees. I can't  
15 remember one of them, but I believe another, the second  
16 one, was Paul Adkins. Again, I'm just recalling this  
17 was years ago.

18 Q. And these two are the only ones you're aware  
19 of?

20 A. Or I'm sorry, not Paul Adkins, Tim Lawler.  
21 It's possible Paul Adkins was the other one, but I  
22 can't tell you for sure.

23 Q. Tim Lawler and some other employee that you  
24 can't remember the name of are the only two that you're  
25 aware of?

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1 A. Yes.

2 Q. This other employee, I know you don't  
3 remember the name. Is there any other description that  
4 you can give me, what their position was, how long they  
5 worked, or is it just you remember those loans?

6 A. I just remember we had two employee loans.

7 Q. Approximately when was this?

8 A. I couldn't even tell you. All the years just  
9 commingle together.

10 Q. More than five years ago?

11 A. Yes.

12 Q. More than 10 years ago?

13 A. I couldn't say.

14 MR. AIGEN: Why don't we take a five-minute  
15 break and then I'll either be done or have just a few  
16 wrap-up questions.

17 MR. RUKAVINA: Okay.

18 (Off the record.)

19 FURTHER EXAMINATION

20 Q. (BY MR. RUKAVINA) Ms. Hendrix, in May of  
21 2019, would you on behalf of Highland alone,  
22 unilaterally, have the authority to lend to HCMFA 2.4-  
23 and/or \$5.0 million?

24 A. No.

25 Q. And would you have had any authority on

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1 behalf of HCMFA in May of 2019 to bind HCMFA to such  
2 notes?

3 A. No.

4 Q. Thank you, ma'am.

5 EXAMINATION

6 Q. (BY MR. MORRIS) Ms. Hendrix, can you get out  
7 of your pile, Exhibit Number 3.

8 And this is the email from Dave Klos to  
9 corporate accounting on May 2nd concerning the  
10 \$2.4 million that was going to be transferred from  
11 HCMLP to HCMFA?

12 A. Yes.

13 Q. And how did Mr. Klos characterize that  
14 transfer?

15 A. He called it a new intercompany loan.

16 Q. What does a new intercompany loan mean to  
17 you?

18 A. That means we are creating a new loan  
19 document, sending money out, tracking it as a  
20 brand-new, fresh loan.

21 Q. And he sent this email to an email group  
22 called corporateaccounting@hcmlp.com. Do I have that  
23 right?

24 A. Yes.

25 Q. Were you included in that email group?

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1 A. I was.

2 Q. Can you identify everybody else who you  
3 recall being in that email group?

4 A. Yes.

5 Q. Who else was in that email group?

6 A. Dave Klos, Frank Waterhouse, myself, Hayley  
7 Eliason, and Blair Roeber.

8 Q. Okay. Did Mr. Waterhouse ever tell anybody,  
9 to the best of your knowledge, in May 2019 that the  
10 transaction should not be booked as a loan?

11 A. No, not to my knowledge.

12 Q. You testified earlier that there was, you  
13 recall, a similar email the next day with respect to a  
14 \$5 million transaction.

15 Do you recall that?

16 A. Yes.

17 Q. Do you recall if that email also went to  
18 corporate accounting?

19 A. I believe so, yes.

20 Q. And to the best of your knowledge, would  
21 Mr. Waterhouse have been informed on May 3, 2019, that  
22 the transaction was being booked by the corporate  
23 accounting department as a loan?

24 A. Yes.

25 Q. Did Mr. Waterhouse tell you at that time or

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1 at any time thereafter that it was a mistake to book it  
2 as a loan?

3 A. No.

4 Q. Did Mr. Waterhouse tell you at that time or  
5 at any time thereafter that he didn't intend to sign  
6 the promissory notes?

7 A. No.

8 MR. RUKAVINA: Objection. To the last  
9 question, objection to form.

10 Go ahead.

11 Q. (BY MR. MORRIS) Okay. The promissory notes,  
12 to be clear, are the two promissory notes that you  
13 testified to earlier that have been marked as exhibits  
14 in this deposition for \$5 million and \$2.4 million  
15 respectively.

16 With that definition as promissory notes, did  
17 Mr. Waterhouse ever tell you at any time that it was a  
18 mistake to sign those notes?

19 MR. RUKAVINA: I'll object to the form.

20 Go ahead.

21 THE WITNESS: No.

22 Q. (BY MR. MORRIS) Did Mr. Waterhouse or  
23 anybody -- withdrawn. I'll go back to the first  
24 question.

25 Did Mr. Waterhouse or anybody in the world

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1 ever tell you at any time since May of 2019 that it was  
2 a mistake to issue the promissory notes as we've  
3 defined them?

4 A. No.

5 Q. Did Mr. Waterhouse or anybody in the world  
6 tell you that Mr. Waterhouse wasn't authorized to affix  
7 his signature to those promissory notes?

8 MR. RUKAVINA: And I'll object. Assumes  
9 facts not in evidence, i.e., the signature. That's  
10 what I've been objecting to.

11 But go ahead and answer.

12 THE WITNESS: Say it again.

13 Q. (BY MR. MORRIS) Did Mr. Waterhouse or  
14 anybody in the world tell you at any time that he  
15 wasn't authorized to have his signature affixed to the  
16 promissory notes?

17 MR. RUKAVINA: Same objection.

18 THE WITNESS: No.

19 Q. (BY MR. MORRIS) Did you have anything to do  
20 with Highland's annual audit?

21 A. Yes.

22 Q. What role did you play with respect to  
23 Highland's annual audit?

24 A. I personally was in charge of completely  
25 writing the entire audit report for the debtor and for

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1 HCMFA. I oversaw all other aspects of the audit my  
2 team carried out.

3 Any requests from the auditors, emails with  
4 questions, any issues that arose, all of that went  
5 through me.

6 Q. And did Mr. Waterhouse play a role in  
7 relation to the annual audit?

8 A. Yes.

9 Q. What is your understanding of  
10 Mr. Waterhouse's role?

11 A. Let's see. He was in charge of reviewing the  
12 financial statements as they were done, so he saw the  
13 end product. He would sign off on the management rep  
14 letter. He signed engagement letters.

15 If there were any big issues, those got --  
16 those would be brought to Frank's attention for sure.

17 Q. Okay. And are you a CPA?

18 A. Yes.

19 Q. And are you familiar with management rep  
20 letters?

21 A. Yes.

22 Q. What is your understanding of what a  
23 management rep letter is?

24 A. That's basically telling the auditors that  
25 everything in the audited financial report is accurate

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1 to the best of their knowledge, they've presented  
2 everything that they have fair and accurately, they're  
3 not withholding any information.

4 Q. And do you recall that the -- Highland's 2018  
5 audit was completed in early June 2019?

6 A. Yes.

7 Q. And did you cause the two promissory notes  
8 that we're talking about here to be delivered to  
9 PricewaterhouseCoopers in connection with the audit?

10 A. Yes.

11 Q. And were those two promissory notes delivered  
12 to PricewaterhouseCoopers because they constituted  
13 subsequent events?

14 A. Yes.

15 Q. Do you recall whether those promissory notes  
16 were described in Highland's 2018 audited financial  
17 statements?

18 A. Yes.

19 Q. And did Mr. Waterhouse or Mr. Dondero ever  
20 tell you at any time that there was a mistake in the  
21 audited financial statements?

22 A. No.

23 Q. Did they ever tell you -- did Mr. Waterhouse  
24 or Mr. Dondero or anybody in the world ever tell you at  
25 any time that the two notes were mischaracterized in



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1 the 2018 audited financial statements of Highland  
2 Capital?

3 A. No.

4 Q. Do you know whether HCMFA also had its annual  
5 financial statements audited by PricewaterhouseCoopers?

6 A. Yes.

7 Q. Did you play any role in connection with that  
8 audit?

9 A. Yes.

10 Q. What role did you play in connection with  
11 HCMFA's audit of the 2018 financial statements?

12 A. Same exact role as with the debtors --

13 Q. And --

14 A. -- writing the audit report, overseeing all  
15 other audit functions.

16 Q. And did you and your group cause HCMFA to  
17 deliver to PricewaterhouseCoopers the two promissory  
18 notes that we've been discussing from May 2019?

19 A. Yes.

20 Q. Did Mr. Waterhouse or Mr. Dondero or anybody  
21 in the world ever tell you that it was a mistake to  
22 deliver those promissory notes to PwC in connection  
23 with HCMFA's 2018 audit?

24 A. No.

25 Q. Were those notes delivered -- withdrawn.

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1                   Were those notes delivered to  
2                   PricewaterhouseCoopers because they constituted  
3                   subsequent events in connection with the 2018 audit?

4                   A.     Yes.

5                   Q.     Do you recall whether PricewaterhouseCoopers  
6                   included as a liability on HCMFA's balance sheet the  
7                   obligations reflected in the two promissory notes at  
8                   issue?

9                   MR. RUKAVINA:  Objection.  Best evidence.  
10                  Answer.

11                  THE WITNESS:  On the 2018 financials?

12                  Q.     (BY MR. MORRIS)  Correct.

13                  A.     Those would not have been included as  
14                  liabilities in the 2018 financials.

15                  Q.     Do you know if HCMFA completed their audit  
16                  for 2019?

17                  A.     No.

18                  Q.     Okay.  Did the notes appear in HCMFA's 2018  
19                  audited financials under the subsequent events section?

20                  A.     Yes.

21                  MR. RUKAVINA:  Objection.  Best evidence.  
22                  Go ahead.

23                  Q.     (BY MR. MORRIS)  Did Mr. Dondero or -- did  
24                  Mr. Waterhouse or Mr. Dondero or anybody in the world  
25                  ever tell you that it was a mistake to include

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1 reference to these notes in HCMFA's 2018 audited  
2 financial statements?

3 MR. RUKAVINA: Same objection.

4 THE WITNESS: No.

5 Q. (BY MR. MORRIS) Okay. Do you recall, did  
6 anybody in the world ever tell you that the  
7 transactions described in Exhibit 3 and the other  
8 document that you recall should never have been booked  
9 as a loan?

10 A. No.

11 Q. Did anybody in the world tell you that you  
12 made a mistake when you created those promissory notes?

13 A. No.

14 Q. Can you pull out what was marked as  
15 Exhibit 16.

16 Do you understand that the Advisors provide  
17 services to certain retail funds?

18 A. Yes.

19 Q. And do you recall that the services are  
20 subject to an agreement that's subject to annual  
21 review?

22 A. Yes.

23 Q. So looking at Exhibit 16, did you understand  
24 that the retail board had asked Highland to disclose --  
25 I'll just read it from the document on page 2,

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1 Bates number ending 881.

2 There's an email from Ms. Thedford that says,  
3 quote, are there any material amounts -- withdrawn.

4 Are there any material outstanding amounts  
5 currently payable or due in the future, open paren,  
6 e.g., notes, close paren, to HCMLP by HCMFA or NexPoint  
7 Advisors or any other affiliate that provides services  
8 to the funds?

9 Do you see that?

10 A. Yes.

11 Q. And were you generally aware that that was  
12 part of the annual renewal process?

13 A. Yes.

14 Q. And you made some comments earlier about  
15 Ms. Thedford's response on the first page.

16 Do you recall that?

17 A. Yes.

18 Q. And you actually were able to correct certain  
19 mistakes that you perceived in her response.

20 Do I have that right?

21 A. Correct.

22 Q. Do you know -- do you see where it says,  
23 HCMFA due to HCMLP as of June 30, 2020, let's just call  
24 it \$12.3 million.

25 Do you see that?

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1 A. Yes.

2 Q. And above that there is a reference to the  
3 6/30 financials.

4 Do you see that?

5 A. I do.

6 Q. Do you know what the reference to the 6/30  
7 financials is?

8 A. Yes.

9 Q. And what is that reference?

10 A. That is referencing the amounts on the  
11 balance sheet at 6/30 that we provided for the 15(c)  
12 materials to the board.

13 Q. Okay. And does that \$12.3 million include,  
14 to the best of your knowledge, the principal amount of  
15 the two notes that we were talking about?

16 A. Yes.

17 MR. RUKAVINA: Objection. Best evidence.

18 THE WITNESS: Yes.

19 Q. (BY MR. MORRIS) And how do you know that?

20 A. Because I kept their financials, I know for a  
21 fact that it included all of their outstanding notes  
22 and it most certainly included these two notes that  
23 we've been talking about today.

24 Q. And to the best of your recollection did  
25 HCMFA provide the 6/30 financials to the retail board?

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1 A. Yes.

2 Q. And to the best of your knowledge did  
3 Mr. Dondero or Mr. Waterhouse or anybody in the world  
4 ever tell you that the financial statements that were  
5 provided to the retail board were erroneous in any way?

6 A. No.

7 Q. Did Mr. Dondero or Mr. Waterhouse or anybody  
8 in the world ever tell you that the 6/30 financials  
9 that were given to the retail board should not have  
10 included the \$7.4 million principal amount on the two  
11 promissory notes?

12 MR. RUKAVINA: Objection. Best evidence.

13 Answer.

14 THE WITNESS: No.

15 Q. (BY MR. MORRIS) Do you know whether -- are  
16 you at all familiar with the Advisors' actual response  
17 to the retail board in October 2020?

18 A. Say that again, please.

19 Q. So this email string is October 2020; right?

20 A. Right.

21 Q. And do you understand that this is kind of a  
22 discussion between Mr. Waterhouse and Ms. Thedford as  
23 to how to respond?

24 A. Yes.

25 Q. Have you ever seen the actual response that

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1 was given to the retail board?

2 A. I likely did. I can't tell you for certain  
3 that I was on the correspondence.

4 Q. Do you recall any discussion at any time that  
5 the \$12.3 million number in Ms. Thedford's email should  
6 be changed in the final report to the retail board?

7 A. I don't believe so.

8 Q. Did anybody ever tell you at any time that  
9 the \$12.3 million number was incorrect?

10 A. No.

11 Q. Did anybody ever tell you at any time that  
12 that number wrongly included the \$7.4 million reflected  
13 in the two notes?

14 A. No.

15 Q. Okay. Do you recall that earlier that  
16 summer -- we looked at Exhibit 15?

17 A. Yep.

18 Q. And that was an attachment to an email that  
19 you personally sent to Mr. Dondero. We saw that  
20 before?

21 A. Right.

22 Q. And this Exhibit 15, which was attached to  
23 your email, identifies amounts due and owing from  
24 NexPoint Advisors; right?

25 A. Right.

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1 Q. And it identifies amounts due and owing for a  
2 number of different entities, including HCMFA; right?

3 A. Correct.

4 Q. Do you know whether the amount included for  
5 HCMFA on Exhibit 15 included the principal amount due  
6 on the two promissory notes?

7 A. It does.

8 Q. Did Mr. Dondero or Mr. Waterhouse ever ask  
9 you why -- withdrawn.

10 Did Mr. Dondero or Mr. Waterhouse ever ask  
11 you how the \$10.5 million number was calculated?

12 A. No.

13 Q. Did Mr. Dondero or Mr. Waterhouse ever  
14 suggest to you that the number was incorrect?

15 A. No.

16 Q. Did Mr. Dondero or Mr. Waterhouse or anybody  
17 in the world ever question the number that you gave to  
18 Mr. Dondero in the summer of 2020 concerning the  
19 principal amount due by HCMFA to HCMLP?

20 A. No.

21 Q. Have you ever made a payment -- withdrawn.

22 Have you ever caused a payment to be made in  
23 connection with an intercompany loan without receiving  
24 the prior approval from either Frank Waterhouse or  
25 Mr. Dondero?



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1 A. No.

2 Q. Has anybody ever said to you that you made a  
3 mistake in applying a payment against principal or  
4 interest due on an intercompany loan?

5 A. No.

6 Q. We saw this morning, and we produced to  
7 Mr. Rukavina and he mentioned earlier, 13-week  
8 forecasts? Do you understand that?

9 A. Yes.

10 Q. Did you review the 13-week forecasts  
11 recently?

12 A. Yes.

13 Q. And we're talking specifically about the  
14 13-week forecasts for the November/December 2020 time  
15 period. Do you understand that?

16 A. Yes.

17 Q. Based on your review of those forecasts, did  
18 those forecasts specifically identify the principal and  
19 interest that were due on the three term notes as of  
20 December 28, 2020?

21 A. Yes.

22 Q. And what was the purpose of creating the  
23 13-week forecasts?

24 A. Sure. That was to keep everybody informed  
25 who was on the cash call, Frank Waterhouse, Jim Seery

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1 and others, keep everybody informed of upcoming  
2 payments that were due on term loans well in advance.

3 Everybody knew about it. It was out there  
4 for everybody to see that was on these cash calls.

5 Q. Now, is it your understanding that  
6 Mr. Waterhouse -- withdrawn.

7 Did you email these forecasts -- withdrawn.

8 Did anybody email these forecasts to the best  
9 of your recollection in late 2020?

10 A. Yes.

11 Q. And was it sent to the corporate accounting  
12 group that we saw earlier?

13 A. It was probably sent to Frank, Seery, the DSI  
14 guys that were involved with the cash call.

15 Q. Okay. And so did you participate in the  
16 creation of the 13-week forecasts?

17 A. Yes.

18 Q. What role did you play in the creation of the  
19 13-week forecasts?

20 A. I was responsible for creating the entire  
21 thing.

22 Q. Okay. And based on the work that you did,  
23 was one of the purposes to make sure that  
24 Mr. Waterhouse was aware of all payments that were  
25 coming due under the intercompany notes?

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1 A. Yes.

2 Q. And was that information that was included on  
3 the reports to Mr. Waterhouse?

4 A. Yes.

5 Q. And do you recall whether there were any  
6 specific discussions in November or December of 2020  
7 concerning those payments -- withdrawn. That wasn't a  
8 good question.

9 Did Mr. Waterhouse or -- withdrawn.

10 Did anybody on behalf of HCMS or HCRE ever  
11 instruct you to make the payments that were due under  
12 their term notes?

13 A. No.

14 Q. Did anybody on behalf of NexPoint ever  
15 instruct you to make a payment that was due at year end  
16 with respect to the NexPoint term note?

17 A. No.

18 Q. Were you authorized to make those payments  
19 without the prior approval of either Mr. Waterhouse or  
20 Mr. Dondero?

21 A. No.

22 Q. I think you testified that there were certain  
23 payments that were made in January 2001 under each of  
24 the three term notes.

25 Do I have that right?

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1 A. Correct.

2 MR. RUKAVINA: 2021.

3 MR. MORRIS: Thank you very much.

4 Q. (BY MR. MORRIS) With that amendment, do you  
5 understand my question?

6 A. Yes.

7 Q. Do you know why the three payments were made  
8 in January of 2021 on each of three term notes?

9 A. Because Frank Waterhouse instructed me to do  
10 so.

11 Q. And he had not instructed you to make those  
12 payments prior to that time?

13 A. Correct.

14 Q. Did you have to prompt Frank Waterhouse in  
15 January of 2021 to make those payments?

16 A. No.

17 Q. So based on the 13-week forecast that you  
18 prepared and delivered to Mr. Waterhouse, is it your  
19 understanding that Mr. Waterhouse knew as early as mid  
20 November 2020 that payments would be due under the  
21 three term notes at the end of the year?

22 A. Yes.

23 Q. And, in fact, did HCMS and HCRE and NexPoint  
24 timely make their installment payments that were due at  
25 year end 2018?

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1 A. Yes.

2 Q. And was that done because HCMLP received the  
3 instructions of somebody authorized to give the  
4 instruction on behalf of those entities?

5 A. Yes.

6 Q. Did HCMS and HCRE and NexPoint timely make  
7 the installment payments that were due at year end  
8 2019?

9 A. Yes.

10 Q. And why did they make those payments?

11 A. Because we were provided instruction and  
12 authorization to do so.

13 Q. Okay. And is the only reason that the  
14 payment wasn't made at year end 2020 because nobody on  
15 behalf of the Advisors -- withdrawn.

16 Is the only reason that no payment was made  
17 at the end of 2020 is because no one on behalf of  
18 NexPoint, HCRE, or HCMS directed HCMLP to make those  
19 payments?

20 A. Correct.

21 MR. AIGEN: Objection. Form.

22 Q. (BY MR. MORRIS) And you testified earlier to  
23 a call that you had with Mr. Waterhouse. I think you  
24 said it was either November 30 or December 1.

25 Do you recall that?

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1 A. Yes.

2 Q. And did you personally continue to prepare  
3 the 13-week forecasts after your conversation with  
4 Mr. Waterhouse?

5 A. Yes.

6 Q. And did those 13-week forecasts continue to  
7 include the payments that were due under the three term  
8 notes at the year end?

9 A. Yes.

10 Q. And that's information that you gave to  
11 Mr. Waterhouse; is that right?

12 A. Right.

13 Q. Mr. Rukavina elicited from you the fact that  
14 payments of principal hadn't been made on demand notes  
15 that were executed in favor of Mr. Dondero's  
16 affiliates.

17 Do you recall that?

18 A. Yes.

19 Q. Okay. Was that a topic of conversation with  
20 PricewaterhouseCoopers at any time?

21 A. Yes.

22 Q. Can you tell me about that conversation?

23 A. Sure. As part of our annual audit, the  
24 auditors would, you know, make sure that our  
25 receivables are collectible. And if they thought for

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1 any reason they weren't, then they were going to raise  
2 an issue, a going concern issue.

3 That came up several years in a row with  
4 HCMFA.

5 Q. Do you recall that the three term notes at  
6 issue here were all signed on May 31, 2017?

7 A. Yes.

8 Q. And all of those term notes involved a  
9 roll-up of previously issued demand notes; is that  
10 right?

11 A. Correct.

12 Q. Do you know why in -- at the end of May 2017  
13 NexPoint, HCRE, and HCMS rolled up their demand notes  
14 into individualized term notes?

15 A. Yes.

16 Q. What is your understanding as to why that  
17 happened?

18 A. That would get the auditors a little bit more  
19 comfort over our outstanding loans, ensuring that we  
20 have an amortization schedule, an underlying contract,  
21 showing that payments will be coming in every year on  
22 these outstanding receivables.

23 Q. Okay. As the person responsible for  
24 preparing Highland's audit, did anybody ever tell you  
25 at any time that any of the notes were not valid

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1 obligations of the maker?

2 A. No.

3 Q. As the person responsible for Highland's  
4 audit, did anybody ever tell you at any time that any  
5 of the notes at issue should not have been signed?

6 A. No.

7 Q. As the person responsible for Highland's  
8 audit, did anybody ever tell you at any time that any  
9 of the notes at issue were signed by mistake?

10 A. No.

11 Q. Did anybody ever tell you at any time that --  
12 withdrawn.

13 As the person responsible for Highland's  
14 audit, did anybody ever tell you at any time that  
15 Mr. Dondero didn't approve of any of the notes?

16 A. No.

17 Q. As the person responsible for Highland's  
18 audit, did anybody ever tell you at any time that  
19 the -- any of the notes at issue were subject to an  
20 oral agreement?

21 A. No.

22 Q. As the person responsible for Highland's  
23 audit, did anybody ever tell you at any time that any  
24 of the notes were amended?

25 A. No.



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1 Q. As the person responsible for Highland's  
2 audit, did anybody ever tell you at any time that any  
3 of the notes would be forgiven?

4 A. No.

5 Q. During your 15 years at Highland, has an  
6 intercompany loan ever been forgiven in whole or in  
7 part?

8 A. No.

9 Q. During your -- withdrawn.

10 Can you recall any note that Highland ever  
11 held as the payee that was forgiven in whole or in part  
12 in the five years prior to bankruptcy, go back to 2014?

13 A. No.

14 Q. Is it your understanding as the person  
15 responsible for Highland's audit that the forgiveness  
16 of notes, if they were in a material amount, would have  
17 had to have been disclosed in the audited financial  
18 statements?

19 A. Yes.

20 Q. So is it fair to say that any evidence of the  
21 forgiveness of material amounts would have been  
22 disclosed in Highland's financial statements?

23 A. Yes.

24 MR. MORRIS: I have no further questions.

25 MR. RUKAVINA: I have none.

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MR. AIGEN: None.

MR. RUKAVINA: Okay. Thank you very much.

(Whereupon, the deposition adjourned at  
1:19 P.M.)

--oOo--

I declare under penalty of perjury that the  
foregoing is true and correct. Subscribed at  
\_\_\_\_\_, Texas, this \_\_\_\_ day of  
\_\_\_\_\_, 2021.

\_\_\_\_\_  
KRISTIN HENDRIX

CERTIFICATE OF REPORTER

I, BRANDON D. COMBS, a Certified Shorthand Reporter, hereby certify that the witness in the foregoing deposition was by me duly sworn to tell the truth, the whole truth, and nothing but the truth in the within-entitled cause;

That said deposition was taken in shorthand by me, a disinterested person, at the time and place therein stated, and that the testimony of the said witness was thereafter reduced to typewriting, by computer, under my direction and supervision;

That before completion of the deposition, review of the transcript was not requested. If requested, any changes made by the deponent (and provided to the reporter) during the period allowed are appended hereto.

I further certify that I am not of counsel or attorney for either or any of the parties to the said deposition, nor in any way interested in the event of this cause, and that I am not related to any of the parties thereto.

DATED: November 1, 2021



Brandon Combs, Certified Shorthand  
Reporter No. 10927 in and for the  
HCMFA APP 0584

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My commission expires 1-31-23

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131:3 133:5,12 <b>Yep</b> 76:9 123:17 <b>yesterday</b> 9:2 86:7,9 <b>York</b> 2:11	<b>12.3</b> 120:24 121:13 123:5,9 <b>12/30/29</b> 78:25 <b>13</b> 4:14 72:11,13 72:16 <b>13-week</b> 67:5 125:7,10,14,23 126:16,19 128:17 130:3,6 <b>14</b> 4:17 22:25 23:9 36:7 40:25 76:10,17,19 82:6 85:17 90:22 91:4 93:8	<b>2.4</b> 30:20 32:13 32:21 33:19 37:12 38:22 39:7 42:16 43:3 58:5,11 111:10 113:14 <b>2.4-</b> 110:22 <b>2.4M</b> 3:12,19,23 <b>2000</b> 86:22 <b>2001</b> 127:23 <b>2004</b> 10:21 11:12 <b>2005</b> 11:11 20:16 21:2,9,19 <b>2009</b> 10:23 <b>2014</b> 133:12 <b>2015</b> 10:24 <b>2017</b> 12:15 19:23 73:2 74:7 131:6 131:12 <b>2018</b> 116:4,16 117:1,11,23 118:3,11,14,18 119:1 128:25 <b>2019</b> 3:14 12:10 12:17,19,25 13:8,14 17:9,12 17:20 18:2,8,10 18:10 19:15 20:2,2 21:2,9 21:19 23:16,16 24:12,14 30:20 31:17 34:14 37:11 38:17,21 39:6,14 40:3,5 41:11,18 44:25 45:14 46:9,12 46:19 47:12,24 48:21 49:6,19 50:2 53:5,6 54:21 55:3,10 56:9,20 57:22 74:7 78:5 80:23 81:6,18 110:21 111:1 112:9,21 114:1 116:5	117:18 118:16 129:8 <b>2020</b> 4:4,11,22 12:7 14:2,5 15:6,10,21 16:3 24:22 59:12 62:6,10 65:14 66:3,7,18,19 67:13,17,20 68:1,8,14,21 70:23 71:4 74:8 75:19 76:4 78:2 79:10 83:18 86:25 87:6 88:12 93:21 98:21,25 100:25 101:11 101:19 102:7,8 102:20 103:21 105:4,18 120:23 122:17 122:19 124:18 125:14,20 126:9 127:6 128:20 129:14 129:17 <b>2021</b> 1:15,21 4:8 5:2,6 24:24 26:4 28:20 29:11 62:25 64:15 71:25 73:3 88:2 90:5 90:17 94:10 106:10,25 128:2,8,15 134:9 135:22 <b>21-03004-sgj</b> 1:8 <b>214</b> 136:3 <b>23</b> 85:1 87:3 <b>23,846,000</b> 84:9 <b>24,471,000</b> 89:9 <b>25</b> 61:6 <b>26</b> 10:17 <b>27</b> 1:15,21 <b>28</b> 125:20	<b>29</b> 83:18 84:1 <b>2nd</b> 58:5 111:9 <hr/> <b>3</b> <b>3</b> 3:10,14,17,21 4:11 31:15,18 34:4,11 35:21 36:20 37:11,19 38:12 41:11,18 44:18 56:20 65:14 66:3 111:7 112:21 119:7 <b>30</b> 3:10,12 71:4 72:4 74:10 86:25 87:6 93:21 120:23 129:24 <b>30-year</b> 19:22 <b>30,746,812.33</b> 4:14 <b>30.7</b> 66:9,13 <b>30.7M</b> 4:17 <b>31</b> 3:14 4:15 67:16 70:22 79:10 88:12 98:21,25 100:25 101:11 101:19 102:8 102:19 103:20 105:3,18 131:6 <b>3102</b> 2:17 <b>312</b> 136:1 <b>34th</b> 2:11 <b>3800</b> 2:4 <b>38th</b> 1:25 <hr/> <b>4</b> <b>4</b> 3:17 42:15,17 42:19 43:6,18 43:18 44:21,24 45:22,25 46:3 46:19 48:11,19 50:13,17 51:2 52:8 55:17,24
<hr/> <b>Z</b> <b>zeros</b> 87:15 <b>ZIEHL</b> 2:10 <b>Zoom</b> 6:8,10 <hr/> <b>0</b> <b>05.02.2019</b> 4:1 <b>05.03.2019</b> 3:25 <hr/> <b>1</b> <b>1</b> 3:10 30:14,15 30:18 33:1 71:4 71:25 72:4 74:10 80:9 93:21 129:24 135:22 <b>1-31-23</b> 136:4 <b>1.3</b> 81:1,2 <b>1.4</b> 90:23 91:3,23 <b>1:19</b> 1:22 134:4 <b>10</b> 4:3 9:23,25 10:5 28:17 59:4 59:9 110:12 <b>10,530,000</b> 87:20 <b>10.5</b> 85:6,9 124:11 <b>10:11</b> 1:22 <b>10017-2024</b> 2:11 <b>101</b> 136:2 <b>11</b> 4:7 62:14,21 62:23 <b>11:27</b> 57:22 <b>110</b> 3:5 <b>111</b> 3:6 <b>12</b> 4:11 5:5 65:13 65:18,21 90:5,7 90:17 <b>12,286</b> 87:10,10 <b>12,286,000</b> 87:6 87:16,20,24	<b>14-year</b> 38:3 <b>15</b> 4:19 36:7 83:1 83:4,15,17 84:8 84:14,18,19 85:7 87:21 89:21,22 123:16,22 124:5 133:5 <b>15(c)</b> 4:22 86:1 121:11 <b>16</b> 4:21 85:21,22 85:25 86:3 119:15,23 <b>17</b> 5:1 11:15 52:4 88:2,4,7 <b>18</b> 5:5 89:25 90:1 90:3 <b>19</b> 59:12 <b>1982</b> 10:17 <hr/> <b>2</b> <b>2</b> 3:12,12,14,19 3:23 4:3 30:19 30:20,21 31:16 32:21 34:14 37:11 41:11,18 44:19 56:22 57:22 58:11 60:25 61:6,12 79:8 119:25 <b>2.1</b> 81:1			

## Kristin Hendrix - October 27, 2021

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5 3:19 30:12 33:1	75201 2:4			
33:20,25 34:5	75206 136:2			
35:3 36:25	75219 2:18			
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530,000 78:25	<u>9</u>			
56 3:25 4:1	9 4:1 56:21,24,25			
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65 4:11				
683 87:3				



## PROMISSORY NOTE

\$5,000,000.00

May 3, 2019

FOR VALUE RECEIVED, HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, LP. ("**Maker**") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP ("**Payee**"), in legal and lawful tender of the United States of America, the principal sum of FIVE MILLION and 00/100 Dollars (\$5,000,000.00), together with interest, on the terms set forth below (the "**Note**"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the short-term "**applicable federal rate**" (2.39%) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

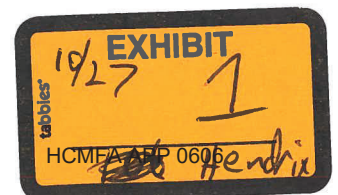
2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

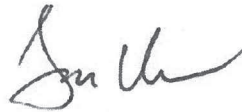
6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.



7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

**MAKER:**



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FRANK WATERHOUSE

## PROMISSORY NOTE

\$2,400,000.00

May 2, 2019

FOR VALUE RECEIVED, HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, LP. ("**Maker**") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP ("**Payee**"), in legal and lawful tender of the United States of America, the principal sum of TWO MILLION FOUR HUNDRED THOUSAND and 00/100 Dollars (\$2,400,000.00), together with interest, on the terms set forth below (the "**Note**"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the short-term "**applicable federal rate**" (2.39%) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.



7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

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MAKER:



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FRANK WATERHOUSE

redacted



## PROMISSORY NOTE

\$5,000,000.00

May 3, 2019

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3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

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7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

**MAKER:**

A handwritten signature in black ink, appearing to read "Frank Waterhouse", is written over a horizontal line.

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FRANK WATERHOUSE



## PROMISSORY NOTE

\$2,400,000.00

May 2, 2019

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2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

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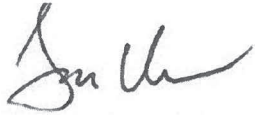




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8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

**MAKER:**



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FRANK WATERHOUSE

## RELATED DOCUMENTS

- No family members
- Not part of a conversation
- Similar (36)

## METADATA

Doc ID	90589
Pages	2
Custodian	Hcmf
Rates No.	-
Revealed	Ⓢ
Unrevealed	Ⓢ
Tags	20211025 Client Files
Filenames	HCMF loan 05.03.2019.doc
Author	JFORSHEE
Company	Strasburger
Title	PROMISSORY NOTE
Created	5/3/2019 2:03 PM CDT
Modified	5/3/2019 2:03 PM CDT
Accessed	5/3/2019 2:03 PM CDT
Printed	5/2/2019 11:27 AM CDT
Path	/HCMF loan 05.03.2019.doc

## PROMISSORY NOTE

\$5,000,000.00

May 3, 2019

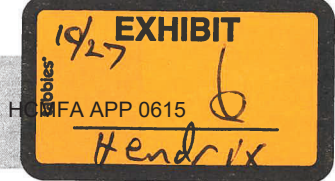
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3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind





## PROMISSORY NOTE

\$2,400,000.00

May 2, 2019

FOR VALUE RECEIVED, HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, LP. ("**Maker**") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP ("**Payee**"), in legal and lawful tender of the United States of America, the principal sum of TWO MILLION FOUR HUNDRED THOUSAND and 00/100 Dollars (\$2,400,000.00), together with interest, on the terms set forth below (the "**Note**"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

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2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand.
3. Prepayment Allowed: Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.
4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind

### RELATED DOCUMENTS

- ... No family members
- Not part of a conversation
- Similar (36)

### METADATA

Doc ID	90594
Pages	2
Custodian	Hcmf
Bates No.	-
Revealed	④
Unrevealed	④
Tags	20211025 Client Files
Filenames	HCMF loan 05.02.2019.doc
Author	JFORSHEE
Company	Strasburger
Title	PROMISSORY NOTE
Created	5/2/2019 11:26 AM CDT
Modified	5/2/2019 11:31 AM CDT
Accessed	5/2/2019 11:31 AM CDT
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## Manage Document

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Comments	Add comments
Template	Normal.dotm
Status	Add text
Categories	Add a category
Subject	Specify the subject
Hyperlink Base	Add text
Company	Strasburger

## Related Dates

Last Modified	5/3/2019 2:03 PM
Created	5/3/2019 2:03 PM
Last Printed	5/2/2019 11:27 AM

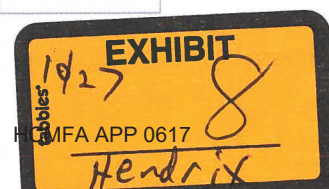
## Related People

Manager	Specify the manager
Author	JFORSHEE
	Add an author
Last Modified By	Kristin Hendrix

## Related Documents

Open File Location

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# Info

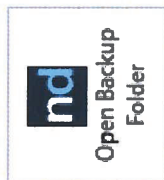
## HCMF loan 05.02.2019

NI » NexPoint » Adversaries » 21-03004 HCMIFA



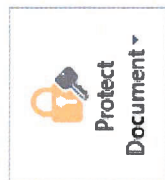
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Size	61.5KB
Pages	2
Words	621
Total Editing Time	5 Minutes
Title	PROMISSORY NOTE
Tags	Add a tag
Comments	Add comments
Template	Normal.dotm
Status	Add text
Categories	Add a category
Subject	Specify the subject
Hyperlink Base	Add text
Company	Strasburger

### Related Dates

Last Modified	5/2/2019 11:31 AM
Created	5/2/2019 11:26 AM
Last Printed	5/2/2019 11:27 AM

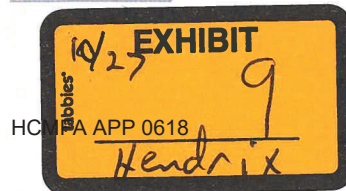
### Related People

Manager	Specify the manager
Author	JFORSHEE
	Add an author
Last Modified By	Kristin Hendrix

### Related Documents

Open File Location

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**From:** Scott Ellington <SEllington@HighlandCapital.com>  
**To:** Kristin Hendrix <KHendrix@HighlandCapital.com>  
**Cc:** Frank Waterhouse <FWaterhouse@HighlandCapital.com>  
**Subject:** Re: HCM - HCMFA Financial Statements  
**Date:** Wed, 2 Dec 2020 17:51:57 -0600  
**Importance:** Normal

---

Yes please do.

Sent from my iPhone

On Dec 2, 2020, at 4:30 PM, Kristin Hendrix wrote:

Scott, can you confirm this is okay to proceed with providing?

Begin forwarded message:

**From:** James Seery  
**Date:** December 2, 2020 at 4:27:43 PM CST  
**To:** Kristin Hendrix  
**Cc:** Jack Donohue , Bradley Sharp , Fred Caruso , James Romey , Frank Waterhouse , Scott Ellington , Greg Demo , Thomas Surgent  
**Subject:** Re: HCM - HCMFA Financial Statements

All:

Scott and I have spoken and agree that the information should be provided to James immediately.

Kristen, please proceed with James. If anyone has any questions or issues, please call me.

Thanks

Best. Jim

Jim Seery

631-804-2049

jpseeryjr@gmail.com

---

**From:** Jim Seery  
**Date:** Wednesday, December 2, 2020 at 11:50 AM  
**To:** Kristin Hendrix



ACL-072954

**Cc:** Jack Donohue , Bradley Sharp , Fred Caruso , James Romey , Frank Waterhouse , Scott Ellington , Greg Demo

**Subject:** Re: HCM - HCMFA Financial Statements

This is an explicit direction from me as CEO of HCMLP to provide the requested information regarding HCFMA to James Romey.

If anyone has issued contrary direction at any time, that direction is superseded and void.

Please provide the information now.

Scott, please call me.

Best. Jim

Jim Seery

631-804-2049

jpseeryjr@gmail.com

---

**From:** Jim Seery

**Date:** Wednesday, November 25, 2020 at 1:48 PM

**To:** Kristin Hendrix

**Cc:** Jack Donohue , Bradley Sharp , Fred Caruso , James Romey , Frank Waterhouse , Scott Ellington

**Subject:** Re: HCM - HCMFA Financial Statements

Can I get this ASAP.

HCFMA is way overdue.

Thank.

Sent from my iPhone

On Nov 25, 2020, at 10:56 AM, Kristin Hendrix wrote:

Hi Jack,

Scott Ellington is going to follow up with the board on this request.

Thanks,

Kristin

---

**From:** Jack Donohue

**Sent:** Thursday, November 19, 2020 11:38 AM

**To:** Kristin Hendrix

**Cc:** Jim Seery ; Bradley Sharp ; Fred Caruso ; James Romey

**Subject:** HCM - HCMFA Financial Statements

Kristin,

Jim Seery has asked me to review the financial records of HCMFA due to the funds owed the Debtor. Can you please send me the balance sheet, P&L and cash flow for 2019 and through 2020?

Thanks,

Jack

---

Jack M. Donohue, CPA

Development Specialists, Inc.

10 South LaSalle Street, Suite 3300| Chicago, Illinois 60603

**Phone:** (312) 263-4141| **Fax:** (312) 263-1180

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**From:** "John A. Morris" <jmorris@pszjlaw.com>

**To:** 'James Seery' <jpseeryjr@gmail.com>, Frank Waterhouse  
<FWaterhouse@HighlandCapital.com>

**Cc:** Thomas Surgent <TSurgent@HighlandCapital.com>

**Subject:** RE: HCM - Information Request

**Date:** Wed, 6 Jan 2021 22:38:31 +0000

**Inline-Images:** image001.jpg

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Confirmed.

**John A. Morris**

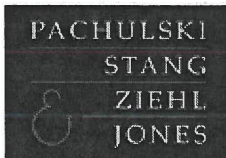
Pachulski Stang Ziehl & Jones LLP

Direct Dial: 212.561.7760

Tel: 212.561.7700 | Fax: 212.561.7777

[jmorris@pszjlaw.com](mailto:jmorris@pszjlaw.com)

[vCard](#) | [Bio](#) | [LinkedIn](#)



Los Angeles | San Francisco | Wilmington, DE | New York | Costa Mesa

---

**From:** James Seery [mailto:jpseeryjr@gmail.com]

**Sent:** Wednesday, January 06, 2021 5:37 PM

**To:** Frank Waterhouse

**Cc:** John A. Morris; Thomas Surgent

**Subject:** Re: HCM - Information Request

Adding Thomas

Best. Jim

Jim Seery

631-804-2049

[jpseeryjr@gmail.com](mailto:jpseeryjr@gmail.com)

---

**From:** Jim Seery

**Date:** Wednesday, January 6, 2021 at 5:35 PM

**To:** Frank Waterhouse

**Cc:** John Morris

**Subject:** Re: HCM - Information Request

Frank:

I am the CEO of HCMLP and your direct supervisor. I have full authority over the Debtor's assets and operations. Indeed my appointment and authority has been court ordered by a court with full jurisdiction



over the Debtor and its assets.

I am entitled to all information on the HCMLP owned and maintained financial and information systems from wherever it came as well as any other information in the possession of the Debtor. To the extent that the Debtor has information pursuant to a shared service agreement, any other agreement, or any other part of its business (pre or post-petition), I am entitled to it, and you are required as CFO to provide to me or deliver it as I request.

For this one time, I am providing you the courtesy of a detailed response. I will even ask counsel to confirm my authority to give this direction. No third party consents are required by you or the Debtor.

I trust this letter allays your concerns.

Best. Jim

Jim Seery

631-804-2049

jpseeryjr@gmail.com

---

**From:** Frank Waterhouse

**Date:** Wednesday, January 6, 2021 at 5:22 PM

**To:** Jim Seery

**Subject:** RE: HCM - Information Request

Jim-

I wanted to follow up on our conversation in which you requested that I provide you with certain financial information relating to the entities below. In the first instance, I don't have access to any information relating to Dugaboy. As you know, I have access to this information because, other than Dugaboy, the Debtor continues to provide shared services. I expressed reservation about whether, pursuant to the Shared Services Agreement and my confidentiality obligations, I was permitted to provide the CEO of the Debtor with this financial information, as only a few of the shared services employees are permitted access to the financial information of the former affiliates of the Debtor. You responded by saying that I would be terminated today if I didn't comply.

I'm not a lawyer, and I want to do the right thing in terms of my obligations to these third parties, which is why I asked you if I was permitted to provide the information under a court order or something.

In thinking about it and your statement that I would be terminated, if Debtor's counsel gives me authority to provide this information and approves that it is legal without me obtaining consent of the Trustees or the appropriate representatives of the non-trusts, then I will provide the access.

I will be available to discuss at 4:30 as per your request.

Thanks

Frank

---

**From:** James Seery

**Sent:** Wednesday, January 6, 2021 3:31 PM

**To:** Frank Waterhouse  
**Subject:** FW: HCM - Information Request

Frank.

As discussed, after consulting with your personal counsel, please speak to me at 4:30pm Dallas time. I will send you and outlook.

Best. Jim

Jim Seery

631-804-2049

[jpseeryjr@gmail.com](mailto:jpseeryjr@gmail.com)

---

**From:** Jim Seery <[jpseeryjr@gmail.com](mailto:jpseeryjr@gmail.com)>  
**Date:** Wednesday, January 6, 2021 at 3:55 PM  
**To:** Frank Waterhouse <[FWaterhouse@HighlandCapital.com](mailto:FWaterhouse@HighlandCapital.com)>, Jack Donohue <[JDonohue@DSIConsulting.com](mailto:JDonohue@DSIConsulting.com)>, Kristin Hendrix <[KHendrix@HighlandCapital.com](mailto:KHendrix@HighlandCapital.com)>  
**Cc:** David Klos <[DKlos@HighlandCapital.com](mailto:DKlos@HighlandCapital.com)>, Bradley Sharp <[bsharp@DSIConsulting.com](mailto:bsharp@DSIConsulting.com)>, Fred Caruso <[fcarus@DSIConsulting.com](mailto:fcarus@DSIConsulting.com)>, James Romey <[jromey@DSIConsulting.com](mailto:jromey@DSIConsulting.com)>, "Patrick J. O'Malley" <[POMalley@DSIConsulting.com](mailto:POMalley@DSIConsulting.com)>, Thomas Surgent <[TSurgent@HighlandCapital.com](mailto:TSurgent@HighlandCapital.com)>  
**Subject:** Re: HCM - Information Request

My direction.

These are HCMLP business records. Please provided them as requested by Jack ASAP.

Thanks

Best. Jim

Jim Seery

631-804-2049

[jpseeryjr@gmail.com](mailto:jpseeryjr@gmail.com)

---

**From:** Frank Waterhouse <[FWaterhouse@HighlandCapital.com](mailto:FWaterhouse@HighlandCapital.com)>  
**Date:** Wednesday, January 6, 2021 at 3:48 PM  
**To:** Jack Donohue <[JDonohue@DSIConsulting.com](mailto:JDonohue@DSIConsulting.com)>, Kristin Hendrix <[KHendrix@HighlandCapital.com](mailto:KHendrix@HighlandCapital.com)>  
**Cc:** David Klos <[DKlos@HighlandCapital.com](mailto:DKlos@HighlandCapital.com)>, Jim Seery <[jpseeryjr@gmail.com](mailto:jpseeryjr@gmail.com)>, Bradley Sharp <[bsharp@DSIConsulting.com](mailto:bsharp@DSIConsulting.com)>, Fred Caruso <[fcarus@DSIConsulting.com](mailto:fcarus@DSIConsulting.com)>, James Romey <[jromey@DSIConsulting.com](mailto:jromey@DSIConsulting.com)>, "Patrick J. O'Malley" <[POMalley@DSIConsulting.com](mailto:POMalley@DSIConsulting.com)>  
**Subject:** RE: HCM - Information Request

Jack-

I'm assuming you've received approval from these entities to release this information? Please send the approval over to us so we can review. If you haven't done so already, let us know and we will do our best to find out who exactly is representing these entities and can coordinate from there.

Thanks

Frank

---

**From:** Jack Donohue <[JDonohue@DSIConsulting.com](mailto:JDonohue@DSIConsulting.com)>  
**Sent:** Wednesday, January 6, 2021 2:18 PM  
**To:** Kristin Hendrix <[KHendrix@HighlandCapital.com](mailto:KHendrix@HighlandCapital.com)>  
**Cc:** Frank Waterhouse <[FWaterhouse@HighlandCapital.com](mailto:FWaterhouse@HighlandCapital.com)>; David Klos <[DKlos@HighlandCapital.com](mailto:DKlos@HighlandCapital.com)>; Jim Seery <[jpsseeryjr@gmail.com](mailto:jpsseeryjr@gmail.com)>; Bradley Sharp <[bsharp@DSIConsulting.com](mailto:bsharp@DSIConsulting.com)>; Fred Caruso <[fcarus@DSIConsulting.com](mailto:fcarus@DSIConsulting.com)>; James Romey <[jromey@DSIConsulting.com](mailto:jromey@DSIConsulting.com)>; Patrick J. O'Malley <[POMalley@DSIConsulting.com](mailto:POMalley@DSIConsulting.com)>  
**Subject:** HCM - Information Request

Kristin,

At the direction of Jim Seery, please provide DSI with the requested information for each entity below immediately.

Entity:

- Hunter Mountain Investment Trust
- NexPoint Advisors, LP
- Dugaboy Investment Trust
- Highland Capital Mgmt Services, Inc.
- NexPoint Real Estate Partners (f/k/a HCRE Partners, LLC)
- Highland Capital Mgmt Fund Advisors, LP
- NexPoint Real Estate Partners (f/k/a HCRE Partners, LLC)
- Highland Capital Mgmt Services, Inc.

Information:

- 2015 – 2020 bank statements (monthly)
- 2015 – 2020 detailed income statements (monthly or broken out by month)
- 2015 – 2020 detailed balance sheets (monthly or broken out by month)
- 2015 – 2020 cash flows (monthly or broken out by month)

Let know if DSI can assist in gathering the data faster.

Thanks,

Jack

---

Jack M. Donohue, CPA

Development Specialists, Inc.

10 South LaSalle Street, Suite 3300| Chicago, Illinois 60603

**Phone:** (312) 263-4141| **Fax:** (312) 263-1180

**<http://DSIconsulting.com/>**

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**HIGHLAND CAPITAL MANAGEMENT, L.P.**

December 3, 2020

Highland Capital Management Fund Advisors, LP  
 c/o Highland Capital Management, L.P.  
 300 Crescent Court, Suite 700  
 Dallas, Texas 75201  
 Attention: Frank Waterhouse, CFO

Re: Demand on Promissory Notes:

Dear Mr. Waterhouse,

Highland Capital Management Fund Advisors, LP ("Maker") entered into the following promissory notes (collectively, the "Notes"), among others,<sup>1</sup> in favor of Highland Capital Management, L.P. ("Payee"):

Date Issued	Original Principal Amount	Outstanding Principal Amount (12/11/20)	Accrued But Unpaid Interest (12/11/20)	Total Amount Outstanding (12/11/20)
5/2/2019	\$2,400,000	\$2,457,517.15	\$35,884.46	\$2,493,401.61
5/3/2019	\$5,000,000	\$5,119,827.40	\$74,424.05	\$5,194,251.45
<b>TOTALS</b>	<b>\$7,400,000</b>	<b>\$7,577,344.55</b>	<b>\$110,308.52</b>	<b>\$7,687,653.07</b>

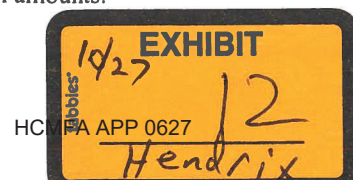
As set forth in Section 2 of each of the Notes, accrued interest and principal is due and payable upon the demand of Payee. By this letter, Payee is demanding payment of the accrued interest and principal due and payable on the Notes in the aggregate amount of \$7,687,653.07, which represents all accrued and unpaid interest and principal through and including December 11, 2020.

**Payment is due on December 11, 2020, and failure to make payment in full on such date will constitute an event of default under the Notes.**

Payments on the Notes must be made in immediately available funds. Payee's wire information is attached hereto as **Appendix A**.

Nothing contained herein constitutes a waiver of any rights or remedies of Payee under the Notes or otherwise and all such rights and remedies, whether at law, equity, contract, or otherwise, are

<sup>1</sup> Maker is also obligated to pay amounts due under promissory notes issued in favor of Payee prior to April 15, 2019. Pursuant to that certain *Acknowledgment from HCMLP*, dated as of April 15, 2019, Payee agreed not to demand payment on such amounts until May 31, 2021. Payee reserves all rights with respect to such amounts.



expressly reserved. Interest, including default interest if applicable, on the Notes will continue to accrue until the Notes are paid in full. Any such interest will remain the obligation of Maker.

Sincerely,

/s/ James P. Seery, Jr.

James P. Seery, Jr.  
Highland Capital Management, L.P.  
Chief Executive Officer/Chief Restructuring Officer

cc: Fred Caruso  
James Romey  
Jeffrey Pomerantz  
Ira Kharasch  
Gregory Demo  
DC Sauter



**Appendix A**

ABA #: 322070381  
Bank Name: East West Bank  
Account Name: Highland Capital Management, LP  
Account #: 5500014686



## PROMISSORY NOTE

\$30,746,812.33

May 31, 2017

THIS PROMISSORY NOTE (this "**Note**") is in substitution for and supersedes in their entirety each of those certain promissory notes described in Exhibit A hereto, from NexPoint Advisors, L.P., as Maker, and Highland Capital Management, L.P. as Payee (collectively, the "**Prior Notes**"), together with the aggregate outstanding principal and accrued and unpaid interest represented thereby.

FOR VALUE RECEIVED, NEXPOINT ADVISORS, L.P. ("**Maker**") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, L.P. ("**Payee**"), in legal and lawful tender of the United States of America, the principal sum of THIRTY MILLION, SEVEN HUNDRED FORTY SIX THOUSAND, EIGHT HUNDRED TWELVE AND 33/100 DOLLARS (\$30,746,812.33), together with interest, on the terms set forth below. All sums hereunder are payable to Payee at 300 Crescent Court, Suite 700, Dallas, Texas 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at the rate of six percent (6.00%) per annum from the date hereof until Maturity Date (hereinafter defined), compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable annually.

2. Payment of Principal and Interest. Principal and interest under this Note shall be payable as follows:

2.1 Annual Payment Dates. During the term of this Note, Borrower shall pay the outstanding principal amount of the Note (and all unpaid accrued interest through the date of each such payment) in thirty (30) equal annual payments (the "**Annual Installment**") until the Note is paid in full. Borrower shall pay the Annual Installment on the 31<sup>st</sup> day of December of each calendar year during the term of this Note, commencing on the first such date to occur after the date of execution of this Note.

2.2 Final Payment Date. The final payment in the aggregate amount of the then outstanding and unpaid Note, together with all accrued and unpaid interest thereon, shall become immediately due and payable in full on December 31, 2047 (the "**Maturity Date**").

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same



shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

9. Prior Notes. The original of each of the Prior Notes superseded hereby shall be marked "VOID" by Payee.

**MAKER:**

NEXPOINT ADVISORS, L.P.

By: NexPoint Advisors GP, LLC, its general partner

By:  \_\_\_\_\_

Name:

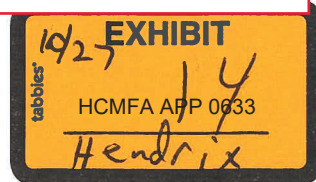
Title:

**EXHIBIT A****PRIOR NOTES**

<b>Loan Date</b>	<b>Initial Note Amount</b>	<b>Interest Rate</b>	<b>Principal and Interest Outstanding as of May 31, 2017</b>
8/21/14	\$4,000,000	6.00%	\$4,616,739.73
10/1/14	\$6,000,000	6.00%	\$6,959,671.23
11/14/14	\$2,500,000	6.00%	\$2,881,780.82
1/29/15	\$3,100,000	6.00%	\$3,534,679.45
7/22/15	\$12,075,000	6.00%	\$12,753,941.10
	<b>\$27,675,000</b>		<b>\$30,746,812.33</b>

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D-NNI -029142

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**HCMLP Notes Receivable****As of 7/31/2020**

NexPoint Advisors	\$	23,846,944	30 yr Amort (issued 2017)
Dugaboy		17,788,532	30 yr Amort (issued 2017)
Highland Capital Management Services		6,677,529	30 yr Amort (issued 2017)
HCRE		5,938,670	30 yr Amort (issued 2017)
Trussway		1,004,993	Due upon maturity - 11/1/2021
SSP Holdings, LLC		2,037,898	Due upon maturity - 11/22/2022
Siepe		2,334,606	Equity conversion option
Highland Capital Management Fund Advisors		10,530,971	Demand
James Dondero		8,911,977	Demand
Multi-Strategy Credit Fund		1,269,000	Demand
HCRE		4,859,929	Demand
Highland Select Equity Fund		3,000,000	Demand
Highland Capital Management Korea		3,760,000	Due upon maturity - 4/21/2037
Highland Capital Management Services		934,331	Demand
<b>Total Notes Receivable</b>	<b>\$</b>	<b>92,895,380</b>	

**Demand** **29,506,208**



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**HIGHLAND CAPITAL MANAGEMENT, L.P.**

January 7, 2021

NexPoint Advisors, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: James Dondero

Re: Demand on Promissory Note

Dear Mr. Dondero,

On May 31, 2017, NexPoint Advisors, L.P, entered into that certain promissory note in the original principal amount of \$30,746,812.33 (the "Note") in favor of Highland Capital Management, L.P. ("Payee").

As set forth in Section 2 of the Note, accrued interest and principal on the Note is due and payable in thirty equal annual payments with each payment due on December 31 of each calendar year. Maker failed to make the payment due on December 31, 2020.

Because of Maker's failure to pay, the Note is in default. Pursuant to Section 4 of the Note, all principal, interest, and any other amounts due on the Note are immediately due and payable. The amount due and payable on the Note as of January 8, 2021 is \$24,471,804.98; however, interest continues to accrue under the Note.

**The Note is in default, and payment is due immediately.** Payments on the Note must be made in immediately available funds. Payee's wire information is attached hereto as **Appendix A**.

Nothing contained herein constitutes a waiver of any rights or remedies of Payee under the Note or otherwise and all such rights and remedies, whether at law, equity, contract, or otherwise, are expressly reserved. Interest, including default interest if applicable, on the Note will continue to accrue until the Note is paid in full. Any such interest will remain the obligation of Maker.

Sincerely,

/s/ James P. Seery, Jr.

James P. Seery, Jr.  
Highland Capital Management, L.P.  
Chief Executive Officer/Chief Restructuring Officer

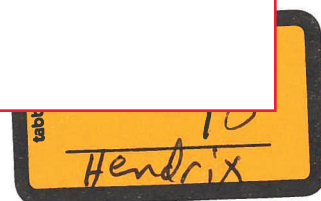


cc: Fred Caruso  
James Romey  
Jeffrey Pomerantz  
Ira Kharasch  
Gregory Demo  
DC Sauter

**Appendix A**

ABA #: 322070381  
Bank Name: East West Bank  
Account Name: Highland Capital Management, LP  
Account #: 5500014686

redacted



CONFIDENTIAL

HCMFA APP 0052 **D-NNL-007578**





David Klos - October 27, 2021

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

--o0o--

HIGHLAND CAPITAL MANAGEMENT,  
L.P.,

Plaintiff,

vs.

HIGHLAND CAPITAL MANAGEMENT FUND  
ADVISORS, L.P.,

Defendants.

)

)

)

)

)

) No. 21-03004-sgj

)

)

)

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DEPOSITION OF

DAVID KLOS

October 27, 2021

DEPOSITION OF DAVID KLOS, produced as a  
witness, duly sworn by me via videoconference at the  
instance of the DEFENDANTS, was taken in the  
above-styled and numbered cause on October 27, 2021,  
from 2:30 P.M. to 5:14 P.M., before BRANDON D. COMBS,  
CSR, RPR, in and for the State of Texas, reported by  
computerized machine shorthand, at 500 North Akard  
Street, 38th Floor, Dallas, Texas.

David Klos - October 27, 2021

## APPEARANCES

MUNSCH, HARDT, KOPF & HARR, PC, 500 North Akard Street, Suite 3800, Dallas, TX 75201, represented by DAVOR RUKAVINA, Attorney at Law, appeared via videoconference as counsel on behalf of the Defendants.

Email: drukavina@munsch.com

PACHULSKI, STANG, ZIEHL & JONES, 780 Third Avenue, 34th Floor, New York, NY 10017-2024, represented by JOHN A. MORRIS, Attorney at Law, appeared via videoconference as counsel on behalf of the Plaintiff.

Email: jmorris@pszjlaw.com

STINSON, LLP, 3102 Oak Lawn Avenue, Suite 777, Dallas, TX 75219, represented by MICHAEL AIGEN, Attorney at Law, appeared via videoconference as counsel on behalf of the Defendants Jim Dondero, HCMS and HCRE Partners.

Email: michael.aigen@stinson.com

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10 (No exhibits marked.)

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David Klos - October 27, 2021

1                                   DAVID KLOS,  
2       having been first duly sworn, testified as follows:

3                                   EXAMINATION

4           Q.     (BY MR. RUKAVINA) Sir, state your name for  
5 the record, please.

6           A.     David Klos.

7           Q.     K-l-o-s?

8           A.     K-l-o-s.

9           Q.     What's your date of birth?

10          A.     May 6, 1982.

11          Q.     And where do you live?

12          A.     I live in Dallas.

13          Q.     What's your educational background?

14          A.     Undergraduate and graduate degrees. I went  
15 to undergrad at Boston College, graduate school at SMU,  
16 with a degree in, Master's of Science in accounting and  
17 MBA from SMU.

18          Q.     Do you hold any professional licenses?

19          A.     CPA in the state of Texas and, I don't know  
20 if it's technically a license, but Series 27 from  
21 FINRA.

22          Q.     And when did you get your CPA license?

23          A.     I don't recall specifically, but it would  
24 have been probably in the '08, '09 time frame.

25          Q.     Is it current?

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1 A. As far as I know.

2 Q. Have you ever been disciplined or threatened  
3 with disciplinary proceedings?

4 A. No.

5 Q. And your relevant work experience, please,  
6 starting with college and afterwards?

7 A. Sure. Out of grad school I started working  
8 at Deloitte in Boston. I worked at Deloitte for  
9 approximately three and a half years, between the  
10 Boston office and the Dallas office.

11 And then I began working at Highland Capital  
12 Management in March of 2009 and I've been at Highland  
13 since then.

14 Q. And when you joined Highland in March of  
15 2009, what was your title or your role at that time?

16 A. My title, if I remember correctly, was  
17 valuation senior analyst. I'm not certain if that was  
18 exactly it, but it was something along those lines.

19 Q. Was it in the valuation group?

20 A. Yes.

21 Q. And then give me your -- today you're the CFO  
22 of Highland; correct?

23 A. Correct.

24 Q. So give me the progression from valuation  
25 analyst to CFO with, to the best of your recollection,

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1 the approximate year that you were promoted, et cetera?

2 A. Sure. I was in the valuation role from  
3 basically March of 2009 to end of 2009.

4 I was then brought over to what we call the  
5 corporate accounting team, so doing the accounting for  
6 Highland Capital Management, LP and of the other  
7 advisor-type entities, where I was primarily focused on  
8 budgeting and forecasting, credit facility compliance.

9 That took from roughly 2010 until I think  
10 middle of 2011, at which point I was moved over to the  
11 fund accounting group, so doing hedge fund accounting,  
12 which was a short role, really, for probably three or  
13 four months.

14 At which point I was brought back to the  
15 corporate team and also put in charge of the valuation  
16 group. I held that role in some way, shape, or form  
17 more or less continuously for the next several years,  
18 although certainly my role evolved and changed.

19 But in terms of the groups that I had  
20 oversight over, those were the groups. Like I said, my  
21 role definitely evolved over time from 2011.

22 Q. So by 2017 what was your title?

23 A. So, yeah, by that time, I was, I believe,  
24 controller. I might have still been assistant  
25 controller.

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1           There were a few title changes in between  
2 there. I think at one point I was manager, at one  
3 point I was senior manager, at one point I was  
4 assistant controller and at one point I was controller.

5           I can't remember the exact times of all of  
6 those break points.

7           Q. Let me pause you. When you were assistant  
8 controller, who was the controller?

9           A. There was quite a bit of time where I was  
10 assistant controller and we didn't have a controller.  
11 I couldn't tell you the exact time frame, but there was  
12 definitely an extended time frame.

13           And then in April of 2020, our existing chief  
14 accounting officer left and I assumed his  
15 responsibilities at that time.

16           Q. Let me pause you. That's a new term for me.  
17 Chief accounting officer?

18           A. Uh-huh.

19           Q. Who was that person?

20           A. The person that left?

21           Q. The person that was the chief accounting  
22 officer until April 2020.

23           A. Cliff Stoops.

24           Q. And do you have any idea or knowledge whether  
25 at Highland that was like an officer-level position?

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1           A.     It was not. It was more of a term of art, I  
2 would describe it. So it -- so, yeah --

3           Q.     To the best of your recollection, when did  
4 you become the controller at Highland Capital  
5 Management, LP?

6           A.     I couldn't pin down a specific date. Like I  
7 said, the responsibilities were very similar. I would  
8 guess the change from assistant controller to  
9 controller was probably in the, most likely in the '16,  
10 '17, maybe '18 time frame.

11          Q.     Can we agree that as of May 1, 2019, you were  
12 the controller at Highland?

13          A.     Yes.

14          Q.     So let's focus on that time frame, May 2019,  
15 and you're the controller. Who do you report to at  
16 Highland?

17          A.     Frank Waterhouse.

18          Q.     The CFO?

19          A.     Correct.

20          Q.     No one in between you and him?

21          A.     Correct.

22          Q.     So what -- explain to me the role between the  
23 chief accounting officer and the chief financial  
24 officer in that time frame, '19, '20?

25                 MR. MORRIS: Objection to the form of the



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1 question.

2 THE WITNESS: Very little. Like I said,  
3 chief accounting officer was more of a term of art.  
4 What that role actually had oversight of was our retail  
5 fund accounting, institutional fund accounting,  
6 operations, so loan settlement and treasury.

7 And probably another department or two that  
8 I'm forgetting, but it did not have any oversight over  
9 the corporate accounting group.

10 Q. (BY MR. RUKAVINA) And in May of 2019, as the  
11 controller, what were -- what was your role or what  
12 were your duties?

13 A. In May of 2019 I was at that point still  
14 overseeing the valuation group. I was overseeing the  
15 corporate accounting group, which my primary direct  
16 report there was Kristin Hendrix, who really was the  
17 day-to-day person. But I certainly oversaw her.

18 Q. By that you mean the person that answers to  
19 you?

20 A. Correct. Sorry. If I flipped that, I  
21 apologize. So I was overseeing that group, which had,  
22 you know, fairly broad responsibilities.

23 In terms of, you know, accounting for the  
24 Advisor, doing forecasts when they were called for,  
25 performing the audit every year, managing cash,

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1 processing payroll, things of that nature.

2 And then at that time I was also put in  
3 charge of one of the public REITs that was launching at  
4 the time under the NexPoint flag. And getting that  
5 team started.

6 Q. Did you mention that in May of 2019 you were  
7 still involved with the valuation group?

8 A. I did.

9 Q. Did you have a title at the valuation group?

10 A. Nothing distinct from my overall controller  
11 title. These titles were often, like I said, terms of  
12 art, whether it was controller or chief accounting  
13 officer.

14 Q. What did the valuation group at Highland do?

15 A. Well, valuation group was really a liaison  
16 with both third-party pricing providers, pricing  
17 services, brokers on the street, front office, members  
18 at Highland.

19 To, you know, to work on valuing the  
20 securities held across the platform, both for Highland  
21 HCMLP managed funds as well as affiliated managed  
22 funds.

23 Q. So who did -- did you report to anyone at the  
24 valuation group? In other words, did it have its own  
25 separate hierarchy kind of?

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1 A. Frank Waterhouse.

2 Q. And were --

3 A. I should clarify too, that the valuation team  
4 isn't ultimately responsible for the valuations  
5 themselves, but they do act in this liaison role.

6 Q. Perhaps that's my confusion. Is there a  
7 separate group that handles just valuation?

8 A. No.

9 Q. Is there an outside consultancy that handled  
10 that in May of 2019?

11 A. I don't know if I would call it consultancy,  
12 but there was a third-party valuation service provider  
13 that would do certain of the, call it illiquid, harder  
14 to value securities.

15 Q. So would you say that you were pretty busy in  
16 April, May 2019?

17 MR. MORRIS: Objection to the form of the  
18 question.

19 THE WITNESS: I've been busy throughout my  
20 career.

21 Q. (BY MR. RUKAVINA) In April, May, June 2019,  
22 how many hours a month do you estimate you worked for  
23 Highland?

24 MR. MORRIS: Objection to the form of the  
25 question.

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1 THE WITNESS: I don't remember. A  
2 significant number.

3 Q. (BY MR. RUKAVINA) Certainly full-time?

4 A. Absolutely.

5 Q. Would you say that you were working more than  
6 200 hours a month in that time frame for Highland?

7 A. I don't know how many hours. I should  
8 clarify, we're using Highland very liberally. When I  
9 say Highland, supporting the entire apparatus,  
10 platform. Significant number of hours at that time,  
11 and before and after.

12 Q. And let's explore that a little bit. You  
13 mentioned one of the funds for NexPoint. I'd like to  
14 talk about NexPoint Advisors, LP, just NexPoint  
15 Advisors, LP.

16 Did you ever have an official role or title  
17 with NexPoint Advisors, LP?

18 A. Not that I can remember.

19 Q. Do you know if you were ever the controller  
20 for that entity?

21 A. I'm not certain. I'm not certain.

22 Q. But I take it that pursuant to the shared  
23 services agreement you, as an employee of Highland,  
24 were providing services on behalf of NexPoint?

25 MR. MORRIS: Objection to the form of the

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1 question.

2 THE WITNESS: I provided many of the same  
3 services for NexPoint Advisors that I provided for  
4 Highland, similar types of services.

5 Q. (BY MR. RUKAVINA) And briefly about Highland  
6 Capital Management Fund Advisors, LP, HCMFA, did you  
7 ever have like an official title or role with that  
8 entity, to your knowledge?

9 A. Again, not that I can remember.

10 Q. Not to your knowledge, the controller ever of  
11 that entity?

12 A. I'm not certain whether I was or not.

13 Q. But you provided services to that entity as  
14 part of your role at Highland pursuant to shared  
15 services?

16 A. Similar to NexPoint as I described.

17 Q. When you were controller of Highland, was  
18 that an officer-level position at Highland?

19 A. No.

20 Q. When did you become the chief financial  
21 officer of Highland?

22 A. Chief financial officer?

23 Q. Uh-huh.

24 A. 2021, March.

25 Q. After Mr. Waterhouse was gone?

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1 A. Yes.

2 Q. And I'm going to ask you a little bit about  
3 your compensation today at Highland.

4 You don't have to give me specific numbers  
5 unless I ask you, please, but I take it you have a base  
6 compensation?

7 A. Yes, I have a base.

8 Q. Do you have any bonus structure compensation?

9 A. Yes, I have a bonus.

10 Q. And what is that bonus number or whether it's  
11 paid out based upon or contingent upon?

12 MR. MORRIS: Objection to the form of the  
13 question.

14 THE WITNESS: As I understand, it's based on  
15 my offer letter.

16 Q. (BY MR. RUKAVINA) On your what?

17 A. My letter for extending an offer.

18 Q. Tell me, what is your -- without having to  
19 use express numbers, what is your bonus compensation?  
20 When is it paid, et cetera?

21 A. Yeah, so it's not too dissimilar from the  
22 prior Highland plan that has semiannual installments  
23 payable. And then there's a, kind of an end of plan  
24 bonus when -- I don't remember the specifics on exactly  
25 what triggers that, but it's back-ended in the plan.

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1 Q. Do you have an expectation as to when the  
2 winding down and monetization of Highland and its  
3 assets will be complete?

4 A. That's very hard to speculate, especially  
5 given the amount of litigation that's going on because  
6 I don't know when that's going to play out and that's a  
7 material asset.

8 Q. Have you discussed with Mr. Seery how long  
9 that might be?

10 A. Not that I can specifically remember.

11 Q. Do you believe it will be at least probably  
12 two years, from today?

13 A. I don't know.

14 Q. This bonus compensation, does it or any  
15 amount of it depend on how well Highland or the  
16 claimant trust, how well they do vis-a-vis collecting  
17 money from creditors?

18 A. Not that I can think of. I'd have to  
19 probably go back and look and understand the back-end  
20 piece to say definitively.

21 Q. And back-end piece, does that mean whenever  
22 the winding down is completed?

23 A. Yeah, like I said, I'm not exactly -- I'm not  
24 completely facile with the exact timing, if it's  
25 completed 100 percent or 80 percent, what kind of

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1 qualitative considerations go into that. But  
2 substantially completed.

3 Q. Sitting here today, do you think or believe  
4 that any portion of your compensation over the next  
5 however long it takes to wind down Highland depends on  
6 how much Highland recovers from the litigation  
7 regarding promissory notes?

8 A. I really take exception to that question  
9 because the insinuation is that it's going to somehow  
10 change my answers here, and it's absolutely not.

11 How litigation, it may or may not affect my  
12 ultimate compensation, but that's not going to affect  
13 one iota of the answers I give you today or at any  
14 time, whether I'm on or off the record.

15 Q. Fair enough. So you're going to testify  
16 today truthfully regardless of your compensation. I  
17 got you; right? Correct?

18 A. I didn't follow what you just asked me.

19 Q. You're going to testify today truthfully  
20 regardless of how these events may or may not affect  
21 your compensation; right?

22 A. It's such a loaded question I can't even  
23 begin to answer that.

24 Q. So sitting here today -- I want to ask you  
25 the same question I did before, and your answer to me



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1 was that you took exception to the insinuation. Now  
2 I'd like you to answer my question.

3 Which is, sitting here today, do you believe  
4 that any part of your compensation in the future,  
5 however long it takes to wind down Highland, is going  
6 to depend on how well Highland does in these  
7 litigations concerning the notes?

8 A. I believe my ultimate compensation will  
9 depend on how long this process takes, which I don't  
10 know, and ultimate recoveries to trust beneficiaries  
11 under the plan.

12 And so I do expect that it will vary, but I  
13 would reiterate my earlier comment.

14 Q. So sitting here today, you understand that if  
15 the trust beneficiaries recover more, then you might be  
16 compensated more?

17 A. That's possible.

18 Q. Well, sir, I'm not trying to be a smart ass,  
19 but --

20 MR. MORRIS: Actually, you're coming awfully  
21 close, just to be clear, so be careful, because I'm  
22 offended as well. But continue.

23 MR. RUKAVINA: I'm entitled to ask the man  
24 about his compensation.

25 MR. MORRIS: Right. And your clients have

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1 \$75 million, hard dollars at stake in this litigation,  
2 so we should never believe anything that he says? Is  
3 that where we are now?

4 Q. (BY MR. RUKAVINA) Sir, again, what is your  
5 bonus compensation as it relates to how well the  
6 claimant trust does? Do you remember or not?

7 A. I don't know that that's even something that  
8 I could know at this point.

9 Q. In preparing for this deposition, I take it  
10 you spoke to legal counsel, and I'm not entitled to  
11 know that and I'm not asking that.

12 But did you talk to anyone else?

13 A. I've spoken in general terms to Mr. Seery.

14 Q. Okay. Anyone else?

15 A. I've spoken, again in general terms, to  
16 Kristin Hendrix.

17 Q. Anyone else?

18 A. Not that I can think of.

19 Q. Now, I understand you spoke to Ms. Hendrix  
20 when legal counsel was present; right?

21 A. Yes.

22 Q. So let's exclude that conversation.

23 Did you have any conversations with  
24 Ms. Hendrix regarding this deposition or this  
25 litigation at which counsel was not present?

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1 A. Not in any substance.

2 Q. And when do you recall you might have had  
3 those discussions with her?

4 A. I'm not even sure.

5 Q. Would it have been recently or like 9,  
6 10 months ago?

7 A. No, it would have been recently.

8 Q. And with Mr. Seery, when did you have a  
9 general conversation with Mr. Seery?

10 A. I've had, you know, one or more general  
11 conversations with Mr. Seery. It's my understanding  
12 that he was the 30(b)(6) witness, and he had questions  
13 in preparation for his role in that.

14 Q. So that would have been before last Thursday  
15 that you talked to him? I'll represent to you that  
16 that's when his deposition was.

17 A. Yeah, if I'm accepting that representation,  
18 yes, prior to.

19 Q. Other than that conversation with respect to  
20 him preparing for the 30(b)(6), did you have a  
21 discussion with him about this litigation as it might  
22 relate to your deposition?

23 A. I don't believe so in terms of relating to  
24 this deposition. We've talked at length about the  
25 notes more generally.

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1 Q. And we'll go through that I'm sure.

2 So other than the conversations with  
3 Ms. Hendrix and Mr. Seery and, of course, with counsel  
4 that I'm not entitled to know about, did you discuss  
5 this deposition or what you might be asked today with  
6 anyone else?

7 A. No.

8 Q. Okay. Did you read all or any portions of  
9 the deposition of Frank Waterhouse?

10 A. Certainly didn't read all of it. I have a  
11 general understanding of the topics that were -- that's  
12 a bad way to frame it.

13 I have a general understanding of a few  
14 points that were covered in his deposition.

15 Q. Were you provided -- were you provided the  
16 exact pages of any of his deposition?

17 MR. MORRIS: Objection. Direct him not to  
18 answer.

19 MR. RUKAVINA: You're going to direct him not  
20 to answer whether he read --

21 MR. MORRIS: If you're asking him whether I  
22 directed him to particular --

23 MR. RUKAVINA: I didn't ask that.

24 MR. MORRIS: Rephrase your question.

25 Q. (BY MR. RUKAVINA) Did you read any pages

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1 from Mr. Waterhouse's deposition?

2 MR. MORRIS: Objection. Asked and answered.

3 You can answer again.

4 THE WITNESS: I don't recall -- I don't  
5 recall reading it.

6 Q. (BY MR. RUKAVINA) So were you provided a  
7 summary of his deposition?

8 A. I have had discussions with Mr. Morris in  
9 preparation for this deposition.

10 Q. That's fine. And we can stop there.

11 Did you read or -- did you read the whole or  
12 any portion of Mr. Seery's deposition?

13 A. No, I don't believe I -- no, I don't believe  
14 so.

15 Q. Is it the same answer, that whatever you  
16 discussed would have been through counsel?

17 A. Yes.

18 Q. Did you see any of the videotape of either  
19 Mr. Waterhouse's or Mr. Seery's deposition?

20 A. No.

21 Q. So let's talk about the NexPoint  
22 \$30.7 million note.

23 You're familiar with that note; right?

24 MR. MORRIS: Objection to the form of the  
25 question.

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1 THE WITNESS: Before I answer that, I'd like  
2 to see the note.

3 Q. (BY MR. RUKAVINA) It's in here. I'm looking  
4 for the exhibit number. It's in here somewhere.

5 A. Yes, I'm familiar with this note.

6 Q. Are you familiar with anything having to do  
7 with the negotiation or execution of this note?

8 MR. MORRIS: Objection to the form of the  
9 question.

10 THE WITNESS: Can you repeat.

11 Q. (BY MR. RUKAVINA) Yes. Let me rephrase it.  
12 Did you have anything to do, back on or about  
13 May 31, 2017, with the negotiation or execution of this  
14 promissory note?

15 MR. MORRIS: Objection to the form of the  
16 question.

17 THE WITNESS: Nothing with respect to the  
18 negotiation --

19 Q. (BY MR. RUKAVINA) I'm sorry.

20 A. In terms of the execution, I believe I  
21 coordinated with internal counsel, who drafted the  
22 note, and I can't remember -- I can't recall one way or  
23 the other if I assisted in actually physically  
24 receiving signatures. I just don't remember.

25 Q. Do you remember who that internal counsel

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1 was?

2 A. Yeah, it was Lauren Thedford, who is Highland  
3 in-house counsel.

4 Q. She's a lawyer?

5 A. Yes.

6 Q. Do you recall from that -- strike that.

7 Did you know on or about May 31, 2017 what  
8 the purpose or reason behind Exhibit 13, this  
9 promissory note, was?

10 MR. MORRIS: Objection to the form of the  
11 question.

12 THE WITNESS: The purpose was to take  
13 existing notes, which I believe were exclusively demand  
14 notes, I'm not a hundred percent certain on that, and  
15 roll them into a single note that would have a 30-year  
16 amortization period.

17 Q. (BY MR. RUKAVINA) Do you know why that was  
18 done?

19 A. I believe it was done probably for a number  
20 of reasons, one of which was to ensure some level of  
21 cash flow back to Highland, when I say Highland,  
22 Highland Capital Management, LP, on an annual basis.

23 Q. Was that a concern at Highland Capital  
24 Management, that it wasn't getting any level of cash  
25 flow back?

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1           A.     It wasn't a concern of mine. I don't know if  
2 it was a concern of others.

3           Q.     Do you recall whether any auditor ever raised  
4 that concern?

5           A.     The auditors did raise that in conjunction  
6 with the audit that was concluding around this time.  
7 So yes, they did raise it, you know, probably in the  
8 May of 2017 time frame.

9           Q.     Do you know who decided that it would be a  
10 30-year term note? By that I mean 30 years.

11          A.     Jim Dondero.

12          Q.     Do you know if he decided that in connection  
13 with discussions with anybody or, to your knowledge, he  
14 just decided?

15          A.     As far as I know he just decided it. I  
16 believe there was a draft at one point that was for  
17 20 years, and he wanted to do 30.

18          Q.     So this note is executed in May 31, 2017.  
19 Did you have any further role prior to, let's say,  
20 December 1, 2020 with respect to anything to do with  
21 this promissory note?

22          A.     Sorry, tell me the date again.

23          Q.     From execution of the note until December 1,  
24 2020?

25          A.     And the question was?



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1 Q. Did you have any role in that time frame with  
2 respect to this promissory note on behalf of Highland?

3 MR. MORRIS: Objection to the form of the  
4 question.

5 THE WITNESS: I don't know how to answer  
6 that, it's such an open-ended question. I just don't  
7 know how to respond to that.

8 Q. (BY MR. RUKAVINA) If payments were made on  
9 this note, would you have any duty to record or credit  
10 those payments?

11 MR. MORRIS: Objection to the form of the  
12 question.

13 THE WITNESS: I wouldn't have personally in  
14 my role, but my team would have been involved in the  
15 recording of those.

16 Q. (BY MR. RUKAVINA) And when payments were due  
17 on this note, did you personally have any role with  
18 respect to doing anything to facilitate those payments?

19 A. When payments were due did I have anything --  
20 yes.

21 Q. What was your role?

22 A. So my role, as part of the corporate team,  
23 part of our role is managing cash at the various  
24 entities. So I was involved in weekly cash meetings,  
25 where things like upcoming, whether it's an obligation

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1 or a receipt, would be put on people's radars.

2 And we would, in connection with the 30-year  
3 notes such as this one from NexPoint, we would either  
4 confer with Jim or -- certainly Jim. Also likely his  
5 accountant.

6 In terms of teeing them up to make sure that  
7 they were prepared from a cash flow statement to make  
8 the payment.

9 Q. What do you mean by his accountant?

10 A. Melissa Schroth.

11 Q. What do you mean by his? That's a new name  
12 to me. Who is Melissa Schroth?

13 A. I find it hard to believe that she's a new  
14 name to you. But I think her title was executive  
15 accountant, and she was the keeper of Jim's -- many of  
16 Jim's trusts and personal entities.

17 Q. Was she a Highland employee?

18 A. She was. And when I say Highland, I should  
19 be clear, Highland Capital Management, LP.

20 Q. So when you say Jim's accountant, she was  
21 still a debtor employee, just that she handled  
22 primarily Jim's personal matters?

23 A. She was still a Highland Capital Management,  
24 LP employee but she did Jim's personal matters.

25 Q. Did you have any role at either Highland

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1 Capital Management or NexPoint Advisors as to a  
2 decision as to whether any prepayments on this note  
3 would ever be made?

4 MR. MORRIS: Objection to the form of the  
5 question.

6 THE WITNESS: Can you repeat.

7 Q. (BY MR. RUKAVINA) Let's start from scratch.

8 Do you have any memory of any payments being  
9 made on this note, Exhibit 13, prior to their scheduled  
10 dates of payment?

11 A. There were payments on -- and to be clear,  
12 we're talking about the original 30.7- NexPoint  
13 promissory note? There were payments that I recall  
14 happening throughout 2019 on this note.

15 Q. And we can look at Exhibit 14.

16 MR. MORRIS: What number?

17 MR. RUKAVINA: 14, 1-4.

18 Q. (BY MR. RUKAVINA) And those are only  
19 numbered because Ms. Hendrix, they were used for her  
20 deposition.

21 A. Sure. Just trying to keep these in order, I  
22 apologize. Got it.

23 Q. Do you recognize Exhibit 14?

24 A. Generally. I can't say that I can verify  
25 that this is completely accurate. But it looks

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1 familiar to a loan amortization schedule.

2 Q. Would it have been maintained by Highland?

3 A. Yes.

4 Q. And I'll tell you that no one has yet to  
5 authenticate this with a hundred percent precision, so  
6 I'm not asking you to ratify these numbers, but let's  
7 assume that they are what they are.

8 This does purport to show on the second page  
9 a number of transfers in 2019, which goes along with  
10 your recent answer.

11 Do you see those, sir?

12 A. I do.

13 Q. In particular, 750,000, then 1.3 million,  
14 300,000, 2.1 million, 630,000, 1.3 million.

15 You see all those, sir?

16 A. Yes, I see every one.

17 Q. Do you have any memory, without going into  
18 those transfers of those dates to the dollar, do you  
19 have any memory that those transfers were made?

20 A. Yes. Again, not a specific recollection of  
21 where I was at the time, but yes, I know that these  
22 transfers were made.

23 Q. Do you know why they were made in those  
24 amounts and on those dates?

25 A. No, not without speculating.

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1 Q. What would be your speculation if you were to  
2 speculate?

3 A. My speculation would be that it would be for  
4 liquidity needs at HCMLP, Highland Capital Management,  
5 LP, needing liquidity to operate. Again, that's  
6 speculation. I don't know for a fact that that's true,  
7 but that's what I would assume.

8 Q. Who would have made those decisions in 2019  
9 to transfer those funds?

10 MR. MORRIS: Objection to the form of the  
11 question.

12 THE WITNESS: Yeah, it would have been either  
13 Frank or Jim. I can't say with certainty, but one of  
14 the two. When I say Jim, I should be clear,  
15 Mr. Dondero.

16 Q. (BY MR. RUKAVINA) Between January and  
17 July 2019, do you have any recollection that there was  
18 any particular liquidity issue or need at Highland  
19 Capital Management?

20 A. Yeah, Highland was dealing with liquidity  
21 problems throughout 2019. Maybe not every single day  
22 of the year, but we were continuously needing to bridge  
23 liquidity.

24 Q. And you joined Highland in 2009. From that  
25 point in time, 2009, through 2019, was there any

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1 practice at the enterprise of those businesses to  
2 transfer funds between each other on a basis of when  
3 one needed it and one had it?

4 A. Yes, that was a fairly, generally speaking,  
5 that was a fairly common practice, of using different  
6 entities within the overall structure to bridge  
7 liquidity.

8 Q. Would that have been Mr. Dondero who, in the  
9 final analysis, would have made those decisions?

10 A. Maybe not a hundred percent, but I'd say  
11 the -- if not a hundred percent, certainly most.

12 Q. And who else might have participated,  
13 Mr. Waterhouse?

14 A. Potentially Mr. Waterhouse. And the reason I  
15 hedge on that a little bit is I don't think Frank would  
16 have made any of these decisions on his own either.  
17 But I may have heard them from Frank via Jim.

18 Q. So in those same years, were you ever asked  
19 by Mr. Dondero or Mr. Waterhouse as to whether funds  
20 should be transferred from one entity to another for  
21 liquidity purposes?

22 A. Can you ask that again, please.

23 Q. Yes. Trying to understand, were you part of  
24 those discussions as to whether these transfers should  
25 be made, or did you just learn that a decision to make

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1    them had been made and you executed them?

2           A.    Both, depending on the circumstances.

3           Q.    So sometimes you would be brought into a  
4   discussion?

5           A.    Yes.

6           Q.    And can you think of any particular example?

7           A.    Of when I was brought into the discussion of  
8   whether to transfer? I can't think of an individual  
9   example but we met quite regularly with Jim on cash.

10                So to the extent that either he needed cash  
11   on one of his entities, he might let us know that. Or  
12   to the extent that Highland needed cash, we might let  
13   him know that and ask for basically his assistance in  
14   helping us to meet our own cash needs.

15           Q.    And did he usually find a way to facilitate  
16   the cash need either at one of his entities or at  
17   Highland?

18           A.    I suppose until October 16 of 2019.

19           Q.    Yes. Prior to bankruptcy, do you recall any  
20   instance where one entity wasn't able to transfer funds  
21   to another for liquidity purposes?

22           A.    I can't think of a specific situation. But  
23   I'm sure there were situations where -- you know, cash  
24   was always something that was being juggled, so I don't  
25   know that necessarily liquidity could be met the same

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1 day.

2 But eventually we were able to manage through  
3 those situations, you know, oftentimes through some of  
4 these loans.

5 Q. In instances that you may remember when  
6 Highland Capital Management needed liquidity, do you  
7 know how Mr. Dondero decided from which other entity to  
8 transfer the cash?

9 A. I can't step into his brain and think about  
10 his decision-making process, but if I was going to  
11 oversimplify it I would speculate that it would be  
12 based on who has cash in that moment.

13 Q. Would he ask you or someone on your team who  
14 had cash?

15 A. At times, depending on which entity we're  
16 talking about. Because my team certainly didn't have  
17 responsibility for every single entity in the  
18 enterprise, but we did have responsibility for some.

19 Q. And if your team -- so -- strike that.

20 So over the general -- talking about  
21 generally now, over those 10 years when there were  
22 these intercompany transfers for liquidity purposes,  
23 how were they booked by the debtor, by Highland Capital  
24 Management?

25 MR. MORRIS: Objection to the form of the



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1 question.

2 THE WITNESS: Help me on the direction. So  
3 this is money that Highland is receiving or money that  
4 Highland is sending?

5 Q. (BY MR. RUKAVINA) Sending out.

6 A. Sending out. So this is -- in the scenario  
7 that you're describing, this money that Highland is  
8 sending out to meet some other corporate obligor's  
9 liquidity needs?

10 Q. Yes, sir.

11 A. So those would be booked as a loan. I  
12 would -- I need to hedge a little bit because I'm not  
13 a hundred percent certain, but I would say if not  
14 exclusively via loans close to exclusively.

15 Q. And would they -- strike that.

16 Would they usually be papered up with a  
17 promissory note?

18 A. Yes.

19 Q. Now, why was that the general course during  
20 10 years? Was there a policy and procedure in place,  
21 or would Dondero say book it as a loan, or was that  
22 just the right thing to do from an accounting  
23 perspective?

24 MR. MORRIS: Objection to the form of the  
25 question.

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1 THE WITNESS: At the end of the day it's at  
2 the direction of Jim Dondero, so I can't tell you  
3 exactly why he wanted it to be done that way. But that  
4 was certainly the practice of how it was done in those  
5 situations.

6 Q. (BY MR. RUKAVINA) To your knowledge, did Jim  
7 Dondero ever tell you or anyone else that when Highland  
8 is transferring funds to one of his affiliated entities  
9 that it should always be booked as a loan?

10 A. So remembering 10 years' worth of  
11 conversations, I can't remember a specific instance  
12 where he would have said, always book every single  
13 transaction I direct you to do as a loan. However,  
14 that was the practice.

15 Q. Different question.

16 Do you remember that in each instance, and  
17 again, that might be unfair over 10 years, but do you  
18 remember in each instance when Mr. Dondero said  
19 transfer money from Highland to this other entity for  
20 liquidity needs that he said book it as a loan?

21 MR. MORRIS: Objection to the form of the  
22 question.

23 THE WITNESS: I can't recall with any  
24 specificity what he may or may not have specifically  
25 said so long ago.

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1 Q. (BY MR. RUKAVINA) To your knowledge, was  
2 there any written policy or procedure in place at  
3 Highland Capital Management with respect to how  
4 transfers from Highland to an affiliated entity should  
5 be booked or treated?

6 A. No written policy or procedure that I'm aware  
7 of.

8 Q. Is it fair to say that by May 2019, the  
9 corporate accounting group had handled so many of these  
10 transfers that it believed that if Highland was  
11 transferring funds to another affiliated entity, it's  
12 probably a loan?

13 MR. MORRIS: Objection to the form of the  
14 question.

15 THE WITNESS: Yeah, I don't know that I can  
16 answer that in terms of the corporate accounting team.  
17 That just feels way too broad.

18 It was certainly the practice that when  
19 somebody needed liquidity and it was appropriate from an  
20 accounting perspective, that's how it would be booked.

21 And there was no reason to doubt that that was  
22 the appropriate way to do it, particularly with  
23 direction from either Frank or Jim.

24 Q. (BY MR. RUKAVINA) Is it your testimony that  
25 in each instance that happened, that either Frank or

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1 Jim said, this is a loan, the "this" being the transfer  
2 from Highland to an affiliated entity for liquidity  
3 purposes?

4 MR. MORRIS: Objection to the form of the  
5 question.

6 THE WITNESS: I can't recall with that level  
7 of specificity if those words came out of Jim's mouth.  
8 But with 0 percent doubt in my mind, every single one  
9 of those loans was done with the authority of Jim or  
10 Frank, or both.

11 Q. (BY MR. RUKAVINA) So going back to this  
12 Exhibit 14, now I'm going to ask you about these  
13 payments coming in.

14 Assuming that these payments were actually  
15 made in 2019 --

16 And I think, John, you sent me this morning,  
17 or maybe last night, some bank statements?

18 MR. MORRIS: I actually sent all of the  
19 backup for all payments made, I think, under the notes  
20 at issue a week or two ago.

21 Q. (BY MR. RUKAVINA) How would -- so assuming  
22 that these payments in 2019 that NexPoint made didn't  
23 technically have to be made at that point in time, how  
24 would Highland have booked these payments?

25 A. So I can't tell the column headers, so you'll

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1 have to excuse me if I flip them.

2 Q. They'll be on the first page. Rip the page  
3 off if you need to.

4 A. First one is interest, second one is  
5 principal. On the far right is the actual amount of  
6 the payment. So, for example, March 29, 750,000.

7 And the -- the column that has the negative  
8 411,000 is the application of interest and the 338- is  
9 the application of principal.

10 Q. So again, if Highland -- strike that.

11 If NexPoint made a payment that was not  
12 technically due at that point in time, it would be  
13 recorded as payments on principal and interest?

14 A. It would be recorded as it's reflected in the  
15 schedule. So there's an application of interest and an  
16 application of principal.

17 Q. So based on your understanding and  
18 experience, if that payment wasn't due at that time,  
19 would it have been a prepayment by NexPoint?

20 MR. MORRIS: Objection to the form of the  
21 question.

22 THE WITNESS: Yeah, I'm not sure that it's a  
23 prepayment or not. It's certainly a payment. It's  
24 certainly voluntary. It's not spelled out under the  
25 schedule. I don't know that it's a per se, capital P,

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1 prepayment. I'm just not certain.

2 Q. (BY MR. RUKAVINA) Well, maybe without  
3 respect to these specific transfers.

4 Generally, generally, if one of the Dondero  
5 affiliates made a payment that wasn't scheduled, how  
6 would the debtor have accounted for that payment?

7 A. It would have recorded the payment as a  
8 reduction to either or both outstanding accrued  
9 interest or principal.

10 Q. You wouldn't call those prepayments?

11 A. I don't know the definition of prepayment.  
12 It's a payment. It's off schedule, but I don't know  
13 whether it's a per se prepayment.

14 Q. Would that be something in your experience  
15 that we would look at the promissory note to maybe  
16 determine?

17 MR. MORRIS: Objection to the form of the  
18 question.

19 THE WITNESS: I don't know.

20 Q. (BY MR. RUKAVINA) Well, remember, I'm asking  
21 you the same question just in different ways.

22 Who decides at the debtor, or how does the  
23 debtor decide, if an unscheduled payment is made, how  
24 to apply it?

25 MR. MORRIS: Objection to the form of the

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1 question.

2 Q. (BY MR. RUKAVINA) And his objection is  
3 valid. And just to give you a little bit of a fine  
4 point, does someone look at the promissory note to  
5 decide that? Or is there some other rule or procedure  
6 that someone looks at?

7 MR. MORRIS: Objection to the form of the  
8 question.

9 THE WITNESS: So the person -- I don't know  
10 that I can specifically name a person because the role  
11 probably changed over time.

12 But either our corporate accountant, or the  
13 corporate accountant's boss, which was Kristin Hendrix  
14 for years, would have been responsible for recording and  
15 tracking those payments.

16 So some combination of the corporate  
17 accountant and Kristin would have applied those  
18 payments, and that rolls up through my and Frank's  
19 review ultimately.

20 Q. (BY MR. RUKAVINA) So if I can round off this  
21 discussion, I think you told me a few minutes ago that  
22 in each instance that Highland was transferring money  
23 out to an affiliate.

24 Whether or not you remember Dondero or  
25 Waterhouse saying it's a loan, it would have been a

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1 loan because that's how it always was and it was always  
2 authorized. Generally correct?

3 MR. MORRIS: Objection to the form of the  
4 question.

5 THE WITNESS: There were a few "always" and  
6 "generallys" in there. And like I said, when it came  
7 to liquidity needs, my recollection is that these would  
8 be handled via loans.

9 Q. (BY MR. RUKAVINA) And in reverse, if a  
10 Dondero entity made a payment prior to a scheduled  
11 payment on a note, generally there would be credit  
12 against principal and/or interest provided on that  
13 note?

14 MR. MORRIS: Objection to the form of the  
15 question.

16 THE WITNESS: Generally speaking, yes, if the  
17 payment was for payment on the note.

18 Q. (BY MR. RUKAVINA) Well, that goes back to my  
19 question.

20 Do you know how these payments on Exhibit 14  
21 in 2019 were determined to be payments on these notes,  
22 as opposed to a transfer from NexPoint to Highland for  
23 some other reason?

24 A. What other reason would it be, if I can be so  
25 bold.



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1 Q. Can you think of any other reason in 2019?

2 A. Well, Highland had -- Highland had shared  
3 services and intercompany agreements with NexPoint, at  
4 this time.

5 But these were not payments that could  
6 possibly be confused with those payments. These are  
7 off cycle, they're larger amounts, and there's nothing  
8 that they could be other than payments against the  
9 loan.

10 Q. So I asked you before, and I think you said  
11 that you were speculating with respect to these  
12 payments, that Highland needed money at that time.

13 Do you recall in 2019 any discussions with  
14 anyone, Dondero or Waterhouse, to the effect that  
15 NexPoint has excess cash so maybe NexPoint should  
16 transfer some money to Highland?

17 MR. MORRIS: Objection. Asked and answered.

18 THE WITNESS: Do I still answer?

19 Q. (BY MR. RUKAVINA) Yes.

20 MR. MORRIS: Yes.

21 THE WITNESS: And sorry, I got lost there.

22 Q. (BY MR. RUKAVINA) Yes. So my predicate was  
23 you testified before that you were assuming that these  
24 payments were because of a cash need at Highland;  
25 right?

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1 A. Correct.

2 Q. So with that predicate my question is, do you  
3 recall discussing with Dondero or Waterhouse or with  
4 anyone as to why NexPoint would be transferring money  
5 to Highland at that time?

6 A. Yes, I would have had conversations with  
7 Mr. Dondero or Mr. Waterhouse.

8 Q. And do you remember specifically in 2019 why  
9 these transfers were made from NexPoint as opposed to  
10 some other Dondero entity?

11 A. Not with specificity, but certainly NexPoint  
12 was generating cash at that time, and had the ability  
13 to assist with Highland's liquidity.

14 Q. So sitting here today, you've told me  
15 generally and logically that you have no specific  
16 memory why between January 2019 and August 2019, any of  
17 these payments on Exhibit 14 were made by NexPoint?

18 A. I have no specific memory, but I would say  
19 with certainty that most or all of this was driven by  
20 Highland HCMLP liquidity needs.

21 Q. And most or all of this would have been  
22 Highland in the first instance going to NexPoint and  
23 saying, hey, can you send us some cash?

24 MR. MORRIS: Objection to the form of the  
25 question.

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1 THE WITNESS: Yeah, the premise of that,  
2 given that Mr. Dondero is in control of both sides,  
3 it's a faulty premise.

4 Q. (BY MR. RUKAVINA) But you told me not that  
5 long ago that in these weekly cash meetings that it  
6 would be your team at Highland who would go to  
7 Mr. Dondero and say Highland has a liquidity issue.

8 So wouldn't that liquidity issue have  
9 originated with the Highland team?

10 A. Mr. Dondero is the president of Highland.  
11 He's the president of NexPoint. We're employees of  
12 Highland. We're also shared services providers for  
13 NexPoint.

14 The waters are very muddy in terms of who is  
15 wearing what hat in that conversation.

16 Q. But Mr. Dondero doesn't know that Highland  
17 has a liquidity issue unless someone from the corporate  
18 accounting group tells him, does he?

19 MR. MORRIS: Objection to the form of the  
20 question. I hope that's not the case.

21 THE WITNESS: He has the ability to know what  
22 our cash position is at any given time, at that time.

23 Q. (BY MR. RUKAVINA) So why would you have  
24 these weekly cash meetings with Mr. Waterhouse and  
25 sometimes Mr. Dondero?

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1           A.     So these were cash forecasts, looking at  
2 outlook. I can tell you almost without exception,  
3 maybe -- with maybe without exception, be speculating,  
4 but those forecasts would be showing negative numbers  
5 at Highland, virtually nonstop.

6                     And so it was important, my opinion, but it  
7 was probably important to Frank to make sure that he  
8 was getting in front of Jim to make sure that those  
9 needs were being addressed timely.

10           Q.     So I've asked that question. I want to ask  
11 you a different question.

12                     For any of these payments between  
13 January 2019 and August 2019 reflected on Exhibit 14,  
14 do you have any personal knowledge as to whether they  
15 were intended to be prepayments or not?

16           MR. MORRIS: Objection to the form of the  
17 question.

18           THE WITNESS: I don't know whether they were  
19 intended to be prepayments at that time.

20           Q.     (BY MR. RUKAVINA) Sitting here today, seeing  
21 this document as a CPA and as a sophisticated person,  
22 do you read this Exhibit 14 to indicate that those  
23 payments were booked as prepayments?

24           MR. MORRIS: Objection to the form of the  
25 question.

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1 THE WITNESS: Again, the term "prepayments"  
2 is the one I'm struggling with. I can ascertain that  
3 there are payments and they're off schedule. But I  
4 don't know that I can ascertain that they're  
5 prepayments.

6 Q. (BY MR. RUKAVINA) Well, if a borrower makes  
7 a payment that's ahead of schedule, how would that  
8 generally be accounted for?

9 MR. MORRIS: Objection to the form of the  
10 question.

11 THE WITNESS: It would be accounted for as a  
12 reduction of principal or interest or some combination  
13 of the two.

14 Q. (BY MR. RUKAVINA) Which would relieve the  
15 borrower of having to make that at some point in the  
16 future; right?

17 MR. MORRIS: Objection to the form of the  
18 question.

19 THE WITNESS: No. The borrower still owes  
20 the money. This is showing 23-point -- pick a date.  
21 May 31, 23.034-. That there's significant obligations  
22 that are still outstanding.

23 Q. (BY MR. RUKAVINA) So on June 4, 2019 -- I'm  
24 sorry, on June 19, 2019, the borrower made a  
25 \$2.1 million payment. That's what this shows; correct?

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1 A. I see that.

2 Q. You're not saying that the borrower would  
3 ever have to make that same \$2.1 million payment again,  
4 are you?

5 A. No. What I'm saying is, based on that 2.1-  
6 payment -- and this is reading this cold.

7 But based on that 2.1- payment, 66,000 was  
8 applied to interest, which left zero accrued interest  
9 outstanding. 2.03- applied to principal, which left  
10 24.7- and change still outstanding.

11 Q. Well, I'm going to ask you about the  
12 promissory note then, Exhibit 13, in particular  
13 Section 3, where it says prepayment allowed.

14 And the first sentence says, may or -- pardon  
15 me, maker may prepay in whole or in part the unpaid  
16 principal or accrued interest of this note.

17 Do you see that, sir?

18 A. Yes, I see that.

19 Q. In your experience, can someone prepay  
20 accrued interest?

21 MR. MORRIS: Objection to the form of the  
22 question.

23 THE WITNESS: The document reads, maker may  
24 prepay in whole or in part the unpaid principal or  
25 accrued interest of this note. So I read that to say

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1 that the maker may pay outstanding accrued interest, or  
2 unpaid principal.

3 Q. (BY MR. RUKAVINA) But my question is, as I  
4 understand accrued interest, it means interest that has  
5 already occurred or accrued as of the date, like  
6 today's date; right?

7 A. Uh-huh.

8 MR. MORRIS: Objection to the form of the  
9 question.

10 Q. (BY MR. RUKAVINA) Do you agree with that?  
11 Do you agree with that? Accrued interest  
12 means interest that has already come due, that has  
13 actually happened because interest happens over time.

14 A. Accrued interest --

15 MR. MORRIS: Objection to the form of the  
16 question.

17 Q. (BY MR. RUKAVINA) Why don't you start. Why  
18 don't you define for me accrued interest.

19 A. Sure. Accrued interest would be outstanding  
20 and unpaid interest that -- sorry, it's hard to define  
21 it without using the term. But it's interest that's  
22 accumulated in respect of a principal amount through a  
23 given date.

24 Q. So how do you prepay accrued interest?

25 A. How do you prepay accrued interest. Again,

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1 that's a little bit of a mental jumble.

2 Q. Exactly.

3 A. Well, what I'm...

4 Q. To me one pays accrued interest. But this  
5 note says you can prepay accrued interest. So I'm just  
6 seeing whether you as a CPA, CFO and controller for  
7 years agrees that one can prepay accrued interest?

8 MR. MORRIS: Objection to the form of the  
9 question.

10 THE WITNESS: Frankly, I don't know if it's  
11 possible. That's not how I'm seeing it applied here,  
12 based on the quick review of Exhibit 14.

13 Q. (BY MR. RUKAVINA) Well, the next sentence  
14 says, any payments on this note shall be applied first  
15 to unpaid accrued interest hereon, and then to unpaid  
16 principal hereof.

17 Do you see that, sir?

18 A. I see that.

19 Q. Do you have any understanding based either on  
20 your personal knowledge or in your expertise as a CPA  
21 and a CFO as to what that sentence means?

22 MR. MORRIS: Objection to the form of the  
23 question.

24 THE WITNESS: The way that I would read that  
25 would be that for a payment, for example, pick a date,



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1 Exhibit 14 again, the \$2.1 million payment on or about  
2 June 19. I see that a payment was made.

3 And it was -- it appears that there was  
4 accrued and unpaid interest at that time of 66,000. And  
5 so the first 66,000 was applied to outstanding accrued  
6 interest, to bring the balance to zero.

7 And the difference between that 66,000 and the  
8 2.1 million was applied to principal.

9 Q. (BY MR. RUKAVINA) Do you believe, whether  
10 from personal knowledge from this note, Exhibit 13, or  
11 your experience at Highland or as a CPA, that one can  
12 say that interest, accrued interest will be due on a  
13 future date, it will accrue by that date, but I'm going  
14 to pay it earlier as of that date?

15 MR. MORRIS: Objection to the form of the  
16 question.

17 THE WITNESS: If I can rephrase back to you  
18 just so I make sure I'm understanding the question.  
19 You're saying could someone say, I would like to prepay  
20 interest into the future. It hasn't accrued yet, but  
21 it will be accrued by end of year.

22 And I would like to be prepaid effectively  
23 with respect to that interest, and then have the  
24 remainder used to pay down principal.

25 The question is, can someone do that?

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1 Q. (BY MR. RUKAVINA) Yes.

2 MR. MORRIS: I object to the question.

3 THE WITNESS: I suppose it's possible, but  
4 that certainly wasn't the practice if that makes sense.

5 Q. (BY MR. RUKAVINA) That does make sense. I'm  
6 still struggling, and again, I'm not trying to be a  
7 smart aleck. I'm still struggling with the first  
8 sentence of paragraph 3, that maker may prepay accrued  
9 interest.

10 And it sounds like to me like you don't  
11 necessarily have a definitive answer as to what that  
12 might have meant either.

13 MR. MORRIS: Objection to the form of the  
14 question.

15 THE WITNESS: I think the document speaks for  
16 itself in that sentence.

17 Q. (BY MR. RUKAVINA) But have you seen  
18 something like this, to your recollection, in other  
19 Highland promissory notes?

20 A. Something like what?

21 Q. Prepaying accrued interest.

22 A. Yes, I have seen that.

23 Q. What's your memory? Where have you seen  
24 that?

25 A. I can't remember a specific note, but I

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1 believe that has been done in a specific circumstance.

2 Q. So at least at Highland, you would believe  
3 that that phrase, prepaying accrued interest, had some  
4 established meaning at Highland?

5 MR. MORRIS: Objection to the form of the  
6 question.

7 THE WITNESS: No, I don't agree with that.

8 Q. (BY MR. RUKAVINA) Okay. You understand, of  
9 course, that it's Highland's position that with respect  
10 to this note, a payment was due on December 31 of 2020  
11 that wasn't made; correct?

12 A. Yes, it's my understanding -- if I can state  
13 it back just so I make sure I'm getting it correctly.  
14 It's my understanding that there was a payment due on  
15 December 31, 2020, that wasn't made timely, yes.

16 Q. Okay. Do you know why that payment wasn't  
17 made timely?

18 A. By recollection, because Mr. Dondero had  
19 directed people not to process payments from Highland  
20 affiliates to Highland.

21 Q. When did you learn of that?

22 A. Early December 2020.

23 Q. How did you learn of that?

24 A. I don't specifically remember the  
25 conversation, but I know I had conversations with both

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1 Kristin and Frank. I can't remember if those were  
2 individual or collective, but we understood that to be  
3 the marching orders.

4 Q. Did you hear Mr. Dondero say anything like  
5 that?

6 A. I did not.

7 Q. Did Mr. Waterhouse tell you that Mr. Dondero  
8 said something like that to him?

9 A. Yes.

10 Q. Okay. Separately, do you remember whether  
11 Ms. Hendrix told you that Mr. Waterhouse told her that,  
12 or would it have been kind of at the same meeting?

13 A. I don't remember specifically. It would have  
14 been all around the same time.

15 Q. And to the best of your recollection, what  
16 words -- strike that.

17 To the best of your recollection, did  
18 Mr. Waterhouse include a reference to promissory notes  
19 and the Advisors when he said that Dondero told him not  
20 to make payments?

21 MR. MORRIS: Objection to the form of the  
22 question.

23 THE WITNESS: I don't remember the specific  
24 words that Mr. Waterhouse used. My clear impression  
25 was that it was a very global instruction.

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1           And I should clarify also that, you know, at  
2 this time, I think as we covered in my background.

3           At this point I had assumed the chief  
4 accounting officer role, so I wasn't necessarily in  
5 the -- in as much of the chain of command as I had been  
6 previously to taking that role, where that sort of thing  
7 might have come from Frank, to me, to Kristin.

8           By this time, Frank and Kristin were  
9 communicating and I was sometimes in the loop, sometimes  
10 not.

11           Q.     (BY MR. RUKAVINA) Did Mr. Waterhouse tell  
12 you why Dondero had told him that?

13           A.     I don't remember with any specificity.  
14 However, my perception at the time was that at this  
15 time the relationship between Mr. Dondero and Mr. Seery  
16 was hopelessly broken, and that this was Jim Dondero,  
17 you know, gearing up for a fight in the future.

18           Q.     Prior to December of 2020, had you prepared a  
19 report showing potential overpayments that NexPoint and  
20 HCMFA had made on account of shared services and  
21 payroll reimbursement?

22           MR. MORRIS: Objection to the form of the  
23 question.

24           You can answer.

25           THE WITNESS: I know the analysis that you're

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1 talking about. I would not characterize it the way  
2 that you characterized it.

3 Q. (BY MR. RUKAVINA) And we'll talk about this  
4 more in November, so I really don't want to go into any  
5 detail, unless you feel the need to.

6 But, so you did not prepare that analysis?

7 MR. MORRIS: Objection to the form of the  
8 question.

9 THE WITNESS: I prepared an analysis that  
10 differed from how you described it.

11 Q. (BY MR. RUKAVINA) How would you describe it,  
12 in a nutshell?

13 A. I would describe it as I was asked to refresh  
14 a spreadsheet using certain assumptions, based on the  
15 direction of Frank Waterhouse, and I updated and I sent  
16 him an email.

17 Q. Do you have any understanding that that  
18 analysis was then shared with Mr. Dondero by  
19 Mr. Waterhouse?

20 A. I know that now. I didn't know that at the  
21 time.

22 Q. Do you have any understanding -- strike that.

23 Did you have any understanding that as of  
24 early December 2020 the reason why Mr. Dondero said  
25 what he said to Mr. Waterhouse was because that

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1 analysis, right or wrong, suggested that the Advisors  
2 had made large overpayments?

3 MR. MORRIS: Objection to the form of the  
4 question.

5 THE WITNESS: No, that's incorrect.

6 Q. (BY MR. RUKAVINA) Why is that incorrect?

7 A. Because by recollection, to the best of my  
8 recollection, that analysis didn't occur until after  
9 Dondero had told Frank no more payments.

10 Q. Is that the only reason why you might suspect  
11 that what I just said was incorrect?

12 MR. MORRIS: Objection to the form of the  
13 question.

14 THE WITNESS: Yeah, I don't know how to  
15 answer that.

16 Q. (BY MR. RUKAVINA) I'm going back, when I  
17 asked you, did Waterhouse tell you why Dondero gave the  
18 direction, you said no.

19 MR. MORRIS: Objection to the form of the  
20 question.

21 THE WITNESS: Sorry, I'm not sure. If I  
22 could have the question asked again, I'd be happy to  
23 answer.

24 Q. (BY MR. RUKAVINA) I'll ask it again.

25 Mr. Waterhouse tells you that Mr. Dondero

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1 basically said no more payments; right?

2 A. Yes.

3 Q. And, but he did not tell you why Mr. Dondero  
4 said that?

5 A. Not that I can recall.

6 Q. So he might have?

7 A. He might have. I don't specifically  
8 remember.

9 Q. Do you recall asking him or anyone else why  
10 Dondero would have said that?

11 MR. MORRIS: Objection. Asked and answered.

12 THE WITNESS: I don't recall specifically  
13 asking.

14 Q. (BY MR. RUKAVINA) Do you recall telling  
15 Mr. Seery that Dondero said anything like that?

16 A. At what point in time?

17 Q. Prior to December 31, 2020.

18 A. No, I did not. I did not say that to  
19 Mr. Seery.

20 Q. In your mind was there any present  
21 understanding or concern that NexPoint therefore  
22 wouldn't make a scheduled December 31, 2020, payment?

23 A. Was there any concern that they wouldn't?

24 Q. Yeah.

25 A. I would never use the word "concern." At



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1 that point I wasn't even on the team anymore, so I hate  
2 to say it's other people's problem, but I had my hands  
3 full with plenty of other things. It wasn't something  
4 I was thinking about.

5 Q. Do you remember here today that prior to  
6 December 31, 2020, you believed that NexPoint would not  
7 make the scheduled payment?

8 MR. MORRIS: Objection to the form of the  
9 question.

10 THE WITNESS: I had no idea whether NexPoint  
11 was going to make the payment.

12 Q. (BY MR. RUKAVINA) Were you asked prior to  
13 December 31, 2020 by Mr. Seery or anyone else as to  
14 whether NexPoint was going to make that payment?

15 A. Was I asked by Mr. Seery? Not that I can  
16 remember.

17 Q. Prior to December 31, 2020, do you recall any  
18 discussion with Mr. Seery about the NexPoint note?

19 MR. MORRIS: I'm sorry, can I have the  
20 question again.

21 Q. (BY MR. RUKAVINA) Prior to December 31,  
22 2020, do you recall any discussion that you had with  
23 Mr. Seery about this NexPoint note?

24 A. Not that I can remember. If there was, it  
25 would have been in a cash meeting, but I don't remember

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1 at all.

2 Q. So it might have been some detail as part of  
3 a larger discussion, but you don't remember any  
4 specific discussion just around this note?

5 A. No.

6 Q. When did you learn or how did you learn that  
7 the December 31 payment had not been made?

8 A. I'm not sure, but certainly after  
9 December 31.

10 Q. Do you recall if it was before or after  
11 January 7?

12 A. I think it was after.

13 Q. The default letter from Highland is in here,  
14 if you need to see it. I'm just telling you it's the  
15 January 7.

16 Do you recall having any role with respect to  
17 drafting the default letter that went out to NexPoint  
18 after the failed payment?

19 A. No, none that I can remember.

20 Q. How do you recall learning that the note had  
21 been called by Highland?

22 A. I honestly don't remember. I think after the  
23 fact. I couldn't tell you how far after the fact.

24 Q. Are you aware that on or about July -- I'm  
25 sorry, January 14, 2021 NexPoint made a \$1.4 million

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1 and change payment?

2 A. Yeah, I'm aware that that payment happened.

3 Q. When did you become aware of that payment?

4 A. I think after it happened.

5 Q. Can you tell us, was it days, weeks, months  
6 later?

7 A. It was that day. And if I can expand, I  
8 recall getting an email, seeing a large inflow to  
9 Highland, to MLP because I was on an email distribution  
10 list that had those payments.

11 And I think I emailed or called Kristin and  
12 asked her, is this the NexPoint note, because it was a  
13 large amount of money. And she said yes.

14 Q. Did she tell you anything more about that  
15 payment, when it had been made, why, who authorized it?

16 A. I had that information of when it had been  
17 sent. I had a wire confirm.

18 Q. Only important thing to you is where did that  
19 money come from?

20 A. It wasn't important to me. It was more  
21 curiosity.

22 Q. Did you have any discussions with anyone on  
23 or about that time, January 14, 2021, as to why  
24 NexPoint made that payment?

25 A. Not that I can remember.

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1 Q. Did you have any discussion with anybody on  
2 or about that time, January 14, 2021, as to how HCMLP  
3 should account for that payment?

4 A. No.

5 Q. Did you have any discussion with Mr. Seery at  
6 all about whether that payment should or shouldn't  
7 reinstate the note?

8 A. No discussion that I can remember.

9 Q. Is it fair to say that any of those  
10 considerations would have been at that point in time  
11 above your paygrade?

12 MR. MORRIS: Objection to the form of the  
13 question.

14 THE WITNESS: Yeah, paygrade, I don't know  
15 how to respond to that. Like I said before, I wasn't  
16 on the team at that point. I wouldn't have been  
17 involved in that determination regardless of my  
18 compensation.

19 Q. (BY MR. RUKAVINA) So you know and you  
20 remember that in early December 2020 Frank Waterhouse  
21 told you that Dondero had directed no more payments by  
22 the Advisors. And you know that a payment was made on  
23 January 14.

24 And that's pretty much the extent of your  
25 knowledge about the missed December 31 payment?

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1 MR. MORRIS: Objection to the form of the  
2 question.

3 THE WITNESS: Yeah, it's a very broad  
4 question. In general terms, yes.

5 Q. (BY MR. RUKAVINA) Well, I'm not asking what  
6 you learned since then.

7 I'm asking that as of, let's say, January 15,  
8 2021 that would have been the extent of what you would  
9 have known?

10 A. Correct. And if I can just restate and make  
11 sure I understand what I'm saying.

12 It would have been my understanding that we  
13 had had an instruction -- when I say "we," Kristin and  
14 Frank and by default the whole corporate team -- not to  
15 make payments from these affiliated entities.

16 To my knowledge, none of those payments had  
17 occurred since that point. And then on or about  
18 January 14, such a payment was made and I found out  
19 about that by seeing a wire confirm.

20 Q. Well, you mentioned a couple times that you,  
21 in December 2020, you weren't part of that group  
22 anymore. So do you have any understanding as to why  
23 Mr. Waterhouse would have told you in particular, you  
24 being Mr. Klos, about that instruction from Dondero?

25 A. Sure. I still was participating in cash

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1 meetings, even if it was almost in a nominal role,  
2 because of some of my history that I had. So I was  
3 still participating in those meetings.

4 I've worked closely with Kristin for a long  
5 time, so I may have caught up with her informally. But  
6 as far as day-to-day duties, I wasn't part of that team  
7 anymore.

8 Q. And is it your, did I understand you  
9 correctly, is it your testimony that Mr. Waterhouse  
10 informed the whole accounting group there, the  
11 corporate accounting group, of Mr. Dondero's  
12 instruction?

13 A. I don't know specifically who he told, if he  
14 told every single member of the team, but he certainly  
15 told Kristin and Kristin was the head of the team.

16 Q. And you don't recall anyone, after you heard  
17 about that instruction, raising any concern to the  
18 effect that NexPoint is going to default and be in  
19 trouble if that payment isn't made?

20 A. I don't remember any discussion to that  
21 effect.

22 Q. Do you remember anyone suggesting that they  
23 ought to try to dissuade Mr. Dondero from that  
24 direction?

25 A. Not that I can remember.

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1 Q. Do you remember any discussion at that  
2 approximate point in time for your cash meetings or  
3 anything else as to whether NexPoint had made any  
4 prepayments on the promissory note?

5 MR. MORRIS: Objection to the form of the  
6 question.

7 THE WITNESS: Yeah, it's very hard to -- by  
8 the way, I've said yeah a few times. I want to make  
9 clear that that's just --

10 Q. (BY MR. RUKAVINA) That's not a yes?

11 A. I apologize for that.

12 Q. Understood. Yeah means, it's not a yes.

13 MR. MORRIS: It's a pause; it's an um.

14 Q. (BY MR. RUKAVINA) Germans call it flavoring  
15 particle.

16 A. Sorry, I got lost there. If you can ask  
17 again.

18 Q. Yeah. Do you recall in November or  
19 December 2020 in your weekly meetings or anything else,  
20 any discussion whatsoever concerning whether NexPoint  
21 had made any prepayments on its note?

22 A. No discussions of whether or not there had  
23 been a prepayment that I can remember, no.

24 Q. To the best of your knowledge sitting here  
25 today -- strike that.

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1           For my next question, again we're assuming  
2           that Exhibit 14 is what it appears to be.

3           A.     Sure, sure.

4           Q.     So with that qualification, to the best of  
5           your knowledge, other than what's on Exhibit 14, can  
6           you think of any other record or source or document  
7           that would address whether any unscheduled payments by  
8           NexPoint would or wouldn't be prepayments on the note?

9           MR. MORRIS:   Objection to the form of the  
10          question.

11          THE WITNESS:   Again, with the struggle of the  
12          prepayment, this is the document that I would expect to  
13          explain how the payment was applied.

14          Q.     (BY MR. RUKAVINA)   But you yourself did not  
15          play any role in deciding how the payment would be  
16          applied?

17          A.     I'd hesitate to say no role, because the team  
18          ultimately rolls up to me.

19          Q.     You personally?

20          A.     Me personally, I wouldn't have prepared these  
21          schedules.

22          Q.     Or decided, you personally, as Mr. Klos, how  
23          any unscheduled payments should be accounted for by  
24          Highland?

25          A.     Correct, not without some -- some



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1 authoritative direction on how they should be applied.

2 Q. And that authoritative direction would have  
3 come from Mr. Waterhouse or Mr. Dondero?

4 A. That's what I would expect.

5 Q. Could it have come from anyone else that you  
6 can think of here today?

7 A. Not that I can think of.

8 Q. Now we're going to switch gears and I think  
9 we're going to stop discussing the NexPoint note, and  
10 we're going to focus on the HCMFA two promissory notes.

11 A. Sure.

12 Q. So we're going to go back in time to  
13 May 2019; okay?

14 A. Sure.

15 Q. And is it fair to say by -- that by May 2019  
16 there were at least dozens if not hundreds of instances  
17 of intercompany loans in the years leading up there  
18 from Highland to one of the other entities?

19 MR. MORRIS: Objection to the form of the  
20 question.

21 THE WITNESS: From Highland to one of the  
22 other entities. Can you help with other entities.

23 Q. (BY MR. RUKAVINA) Advisors, the trusts, any  
24 of the Dondero entities?

25 MR. MORRIS: Objection to the form of the

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1 question.

2 THE WITNESS: Yes, there would have been many  
3 loans over the years.

4 Q. (BY MR. RUKAVINA) And do I understand that  
5 most, if not all, of those loans should have been  
6 papered up with a written promissory note?

7 MR. MORRIS: Objection to the form of the  
8 question.

9 THE WITNESS: Should have been. To the  
10 extent that they were for a promissory note, then yes.

11 Q. (BY MR. RUKAVINA) So in the May 2019 time  
12 frame, was there a regular pattern or course or  
13 procedure in place as to how a promissory note would be  
14 physically prepared and presented for approval?

15 MR. MORRIS: Objection to the form of the  
16 question.

17 THE WITNESS: Yeah, when you say a process,  
18 can you please clarify that for me.

19 Q. (BY MR. RUKAVINA) Sure. Let's look at these  
20 two promissory notes and maybe that will help frame the  
21 question. And I apologize for not having them right  
22 here.

23 A. It might be --

24 MR. MORRIS: 1 and 2.

25 MR. RUKAVINA: Yes.

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1 Q. (BY MR. RUKAVINA) Are you familiar with  
2 Exhibits 1 and 2, sir?

3 A. Yes, I am.

4 Q. Do you remember them from back -- strike  
5 that.

6 Did you have any role, to your knowledge,  
7 with the preparation of Exhibits 1 and/or 2?

8 A. With the preparation of the documents?

9 Q. Yeah.

10 A. No.

11 Q. But you did have some role with these  
12 promissory notes?

13 A. Yes.

14 Q. And I'm trying to find that email as well.  
15 There's an email here from you. I'll have it in a  
16 moment. That will help frame the question.

17 MR. MORRIS: Exhibit 3.

18 Q. (BY MR. RUKAVINA) Do you recall that email,  
19 sir?

20 A. Not specifically, but it's right in front of  
21 me. I'm certain that I wrote this email.

22 Q. You have no reason to deny or reject its  
23 authenticity?

24 A. I have no reason to reject it or question it.

25 Q. Just give me a second. I don't understand

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1 what's going on with my exhibits. I just don't  
2 understand this.

3 (Off the record.)

4 Q. (BY MR. RUKAVINA) You have Exhibit 3 in  
5 front of you?

6 A. I do.

7 Q. And it says, please send 2.4 million from  
8 HCMLP to HCMFA. This is a new interco.

9 Meaning intercompany; right?

10 A. Correct.

11 Q. This is a new intercompany loan.  
12 Who told you that this was an intercompany  
13 loan?

14 A. Either Frank or Jim. I would suspect Frank.

15 Q. Do you have any present memory of him telling  
16 you that with respect to this particular loan?

17 A. I don't have a specific recollection, but  
18 with a hundred percent certainty he or Jim would have  
19 directed that.

20 Q. Would they have directed the payment, or  
21 would they have directed that it be papered as a loan,  
22 or both?

23 A. Both.

24 Q. So in each instance -- well, let's take a  
25 step back.

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1           So certainly either Jim or Frank directed you  
2 to transfer the \$2.4 million; correct?

3           A.     Either Jim or Frank would have directed, yes.  
4 There's 0 percent chance I would have sent this email  
5 if I didn't feel a hundred percent confident that this  
6 was authorized in the way that I described in the  
7 email.

8           Q.     But can you also say with certainty that  
9 either Dondero or Waterhouse also told you that this  
10 transfer is an intercompany loan?

11          A.     With a hundred percent certainty, yes. I  
12 can't say that necessarily with respect to Dondero,  
13 because I don't remember if I would have talked to him  
14 specifically about it. But, yes, this would have been  
15 clear that it's a loan.

16          Q.     You say clear. Did someone tell you that  
17 it's a loan, or are you just, because of the prior  
18 10 years of course and conduct, logically deciding that  
19 it has to be a loan?

20               MR. MORRIS: Objection to the form of the  
21 question.

22               THE WITNESS: So this is -- this is not just  
23 a situation of past practice. I would have known with  
24 certainty that this was a loan and that's what was  
25 authorized.

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1 Q. (BY MR. RUKAVINA) How would you have known  
2 with certainty that it was a loan?

3 A. I'll say in part because of past practice,  
4 but also because of the nature of what the money was  
5 going to be used for, and the background behind it.

6 Q. So you knew that nature and that background?

7 A. The nature and background of the 2.4 million,  
8 yes.

9 Q. So you've told me that in part -- I asked you  
10 how did you know it was a loan. You said in part past  
11 practices, in part you knew the nature. Anything else?

12 A. I'm certain that given that I wrote this  
13 email, which Frank is on, that I would have had a  
14 conversation with Frank about what this was.

15 Q. Was Jim Dondero in the corporate accounting  
16 email?

17 A. No, he wasn't.

18 Q. So what is your understanding as to what this  
19 \$2.4 million was for?

20 A. This related to -- well, to separate the  
21 transaction, the 2.4- itself relates to a promissory  
22 note. That's what was executed.

23 HCMFA's use of the 2.4 million was to  
24 reimburse a fund that it managed called Highland Global  
25 Allocation Fund for a NAV error that had occurred

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1 within that fund.

2 Q. Who made that NAV error?

3 MR. MORRIS: Objection to the form of the  
4 question.

5 THE WITNESS: Yeah, it's hard to answer that.  
6 So the Highland Capital Management Fund Advisors is the  
7 advisor to the fund, so they're the responsible party  
8 for making the fund whole in the instances of NAV  
9 errors.

10 Q. (BY MR. RUKAVINA) And did HCMFA contract out  
11 with Highland for valuation services?

12 MR. MORRIS: Objection to the form of the  
13 question.

14 THE WITNESS: I don't specifically remember  
15 if they contracted for valuation services, but if you  
16 tell me that they did, I'll take that at face value.  
17 So yes, HCMFA utilized HCMLP for valuation services.

18 Q. (BY MR. RUKAVINA) Do you have any memory of  
19 what human being or beings made that NAV error?

20 MR. MORRIS: Objection to the form of the  
21 question.

22 THE WITNESS: It's -- in respect to people,  
23 not particularly. In respect to parties, Houlihan  
24 Lokey was the service provider that performed the  
25 valuation that resulted in the NAV error.

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1           And as I described before, the valuation  
2 function was housed at HCMLP by HCMLP employees  
3 supporting that through, among other people, front  
4 office, compliance, other parts of the organization as  
5 well.

6           Q.     (BY MR. RUKAVINA) So it was your  
7 understanding that Highland was loaning \$2.4 million to  
8 HCMFA for HCMFA to compensate that fund?

9           A.     Yes.

10          Q.     Did you have any understanding that Highland  
11 might have been, instead of loaning that money,  
12 actually paying that money to HCMFA to compensate HCMFA  
13 for Highland's valuation error?

14          A.     First, not Highland's valuation error. But  
15 second, no, there's no way that that would have been  
16 what that payment was for.

17          Q.     Why can you say that there's no way that that  
18 would have been what that payment was for?

19          A.     First, this wasn't the first NAV error that  
20 ever occurred. There had been other NAV errors. There  
21 were other NAV errors with respect to this valuation  
22 that pertain to NexPoint Advisors.

23                 There was no reimbursement from HCMLP to  
24 NexPoint or HCMFA, regardless of any individual being  
25 identified as the person. That had just never occurred



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1 to my knowledge.

2 Second, the amount was to meet the liquidity  
3 need of HCMFA. It wasn't to -- it wasn't to  
4 dollar-for-dollar make up for the NAV error. It was  
5 that's how much money HCMFA needed.

6 Third, it was definitely Dondero's practice  
7 and preference to have expenses at HCMFA for tax  
8 purposes. So if this was compensation, he would  
9 ultimately not really be benefiting from the deduction  
10 so.

11 That would have been a strong preference of  
12 his against having it be compensation.

13 So it would have been excruciatingly clear  
14 that this was a loan for liquidity for HCMFA to make  
15 the fund whole, just like it had in the past NAV  
16 errors.

17 Q. How did you know that HCMFA needed  
18 \$2.4 million for liquidity?

19 A. At that point I was still part of the  
20 corporate team, so I had a good sense of how much cash  
21 HCMFA would have had at any given moment. And at that  
22 given moment it would not have had -- I'd be shocked if  
23 it had even 2.4-.

24 Probably would have had probably between  
25 a million and 2 million if I had to speculate.

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1 Q. Okay. So you've given the reasons why this  
2 was clearly a loan.

3 But you never heard Mr. Dondero say that this  
4 was a loan, did you?

5 A. I don't remember. It's possible I did, but I  
6 don't specifically remember.

7 Q. Okay. What about the \$5 million loan on the  
8 day after? What was that \$5 million for?

9 A. That was similar but different. So again,  
10 HCMFA needed liquidity. This time this was for --  
11 related to that same fund.

12 So Highland Global Allocation Fund had  
13 converted from an open-end fund, mutual fund, to a  
14 closed-end mutual fund.

15 And pursuant to that conversion there was a,  
16 I believe it was called a consent fee, for any  
17 investors of that fund who consented to the conversion,  
18 that they would receive a 3 percent fee payable by the  
19 investment advisor.

20 And so at this time the bill came due on that  
21 because the conversion had been completed, and the  
22 accounting for how much that 3 percent was going to be  
23 was complete.

24 HCMFA sure as hell didn't have 5 million  
25 bucks. Excuse my language. Highland needed to pay

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1 HCMFA for the liquidity. HCMFA made the payment to the  
2 fund. It wasn't dollar for dollar. I think it was  
3 like 5,019,000, or some such number.

4 But 5 million was the number that would allow  
5 it to make that payment effectively to the investors of  
6 Global Allocation Fund.

7 Q. Do you have any understanding as to why  
8 Highland, as opposed to some other entity, was  
9 transferring \$7.4 million?

10 A. Highland as opposed to some other entity?

11 Q. Uh-huh.

12 A. Because Highland had the money.

13 Q. But I think we've established earlier that in  
14 the first seven months of 2019, Highland was having  
15 constant liquidity issues?

16 A. It was.

17 Q. And that's part of the reason that NexPoint  
18 was making unscheduled payments on its note; right?

19 A. That's part of the reason NexPoint was making  
20 unscheduled payments on its note, yes.

21 Q. So your recollection is that HCMFA needed  
22 \$2.4 million for liquidity purposes and about  
23 \$5 million for the consent fee. And Highland  
24 transferred those funds because Highland had the funds?

25 A. Yes. And I should clarify that Highland only

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1 had the funds because Mr. Dondero repaid personal notes  
2 to HCMLP on the same days.

3 So he paid 2.4 million on May 2, which  
4 Highland turned around and reloaned. And he paid 4.4-  
5 on May 3, and Highland sent out 5-, so there's a  
6 \$600,000 difference. And my recollection, he paid the  
7 other 600,000 via note repayment within a few days.

8 Q. So this would have been part of some broader  
9 transaction in Mr. Dondero's mind?

10 A. I would not characterize it that way.

11 Q. You established that HCMFA needed money. You  
12 established that Highland temporarily had money because  
13 Dondero provided it with money.

14 But you still don't know, sir, as a fact as  
15 to whether that transfer was a loan or some other  
16 payment from HCMFA -- I'm sorry from HCM, from debtor  
17 to HCMFA?

18 MR. MORRIS: Objection to the form of the  
19 question. Asked and answered a million times. It's in  
20 the documents you're showing him.

21 THE WITNESS: It was a loan.

22 MR. MORRIS: Come on, Davor. With all due  
23 respect, it's in the document. It's on the document.

24 Q. (BY MR. RUKAVINA) I'm being courteous and  
25 respectful to you and I'd ask the same in return; okay?

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1 A. Absolutely. I apologize if I haven't been.

2 Q. Mr. Dondero, would you agree, was the only  
3 person that had the authority at the debtor to  
4 authorize a transfer of 2.4- and then \$5 million?

5 A. At the debtor?

6 MR. MORRIS: Objection to the form of the  
7 question.

8 Q. (BY MR. RUKAVINA) Yes, at the debtor.

9 A. No.

10 Q. Who else could have transferred 2.4 million  
11 or \$5 million?

12 A. Those are two different questions. But if  
13 you're asking who had the authority, certainly Frank  
14 did as well.

15 Q. So Frank had the authority. Perhaps my  
16 question was inartful.

17 Do you believe that Mr. Waterhouse would have  
18 decided to transfer \$2.4 million or \$5 million without  
19 Mr. Dondero's approval?

20 MR. MORRIS: Objection to the form of the  
21 question.

22 THE WITNESS: Generally speaking, no, but I  
23 don't know exactly what the form of the approval. But  
24 he certainly wouldn't have done that on his own without  
25 discussing with Dondero.

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1 Q. (BY MR. RUKAVINA) Do you believe that  
2 Mr. Waterhouse had the ability on behalf of the debtor  
3 to loan \$5 million without Mr. Dondero's approval?

4 MR. MORRIS: Objection to the form of the  
5 question.

6 THE WITNESS: I think he had the technical  
7 authority to. However, I don't believe in practice  
8 that he ever would.

9 Q. (BY MR. RUKAVINA) Same question, \$2.4  
10 million?

11 A. Same answer.

12 Q. We've established that you never really had a  
13 direct employment or types of a role for NexPoint --  
14 I'm sorry, for HCMFA; right?

15 A. Again --

16 Q. To the best of your recollection?

17 A. Best of my recollection I can't remember how  
18 the titles transferred over or whatever, but I don't  
19 believe I did.

20 Q. Do you know whether Mr. Waterhouse in 2019  
21 had the authority, without Mr. Dondero's approval, to  
22 borrow \$7.4 million on behalf of HCMFA?

23 MR. MORRIS: Objection to the form of the  
24 question.

25 THE WITNESS: He had the authority to enter

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1 into the note on behalf of HCMFA, yes.

2 Q. (BY MR. RUKAVINA) Was that something that he  
3 would have done without Mr. Dondero's approval to your  
4 understanding and practice at that time?

5 MR. MORRIS: Objection to the form of the  
6 question.

7 THE WITNESS: Same answer that I gave before  
8 with respect to Highland.

9 Q. (BY MR. RUKAVINA) So here's where I'm going  
10 with all this.

11 Mr. Dondero's position, and tomorrow his  
12 testimony will be, that he caused the \$7.4 million to  
13 be transferred not as a loan to HCMFA, but to  
14 compensate HCMFA for various things including that NAV  
15 error.

16 Other than perhaps you think he's lying,  
17 would you have any knowledge, hearsay, document,  
18 anything, to contradict Mr. Dondero's position?

19 MR. MORRIS: Objection to the form of the  
20 question.

21 THE WITNESS: Yes. I would point to the fact  
22 that as it pertains to the \$5 million note, if we're  
23 separating issues, there's no other possibility of what  
24 that money could be other than either a loan or equity.

25 It's not compensation. Highland is under --

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1 HCMLP has absolutely zero obligation in respect to that  
2 consent fee. So when Highland sends \$5 million to HCMFA  
3 there's nothing else that it can be. That's Point 1.

4 Point 2, we're right in the middle of an audit  
5 at this point. Jim signs rep letters at this point.  
6 He's being provided balance sheets throughout 2019 that  
7 indicate the loans that Highland has on its books.

8 Balance sheets are being prepared in respect  
9 of annual approvals for 15(c) for retail funds in the  
10 fall. Schedules are being created for bankruptcy after  
11 we file in October.

12 Nobody says this is a mistake. Frank is on  
13 all of these emails. Frank never questions it.

14 There's absolutely no evidence from that point  
15 in time to whenever this defense got raised that would  
16 indicate that anybody said that these weren't exactly  
17 what they say they are.

18 Q. (BY MR. RUKAVINA) Are you aware that in  
19 February or March 2019 some \$5.2 million was paid from  
20 insurance that HCMFA had to the fund for the NAV error?

21 A. The amount sounds unfamiliar, but I'm aware  
22 that insurance proceeds were paid from HCMFA to the  
23 fund.

24 Q. And do you think that it's impossible for a  
25 sane, rational person to conclude that HCMFA had a



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1 claim against the debtor related to that NAV error?

2 MR. MORRIS: Objection to the form of the  
3 question.

4 THE WITNESS: If it did, I don't know how  
5 that's not insurance fraud for basically double  
6 collecting insurance proceeds and then collecting it  
7 again.

8 Q. (BY MR. RUKAVINA) So you believe, sir, that  
9 if insurance pays a claim you have no more right to go  
10 against a person who caused the fault?

11 MR. MORRIS: Objection to the form of the  
12 question.

13 THE WITNESS: We can speak specifically here.  
14 This is about a NAV error that an insurance company  
15 reimbursed HCMFA for, which it then turned around and  
16 paid for the fund.

17 So if it went to collect that same, let's use  
18 round numbers, \$5 million from Highland that it's  
19 already collected from insurance, that sounds  
20 inappropriate to me.

21 Q. (BY MR. RUKAVINA) Okay. But you don't know  
22 whether that's allowed in Texas law or not, do you?

23 MR. MORRIS: Objection to the form of the  
24 question.

25 THE WITNESS: No, I don't know whether it's

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1 allowed under Texas law.

2 Q. (BY MR. RUKAVINA) So you don't know that if  
3 you're hit by someone on the street and your medical  
4 insurance pays your bills, you don't know that he still  
5 has to pay you for the same bills?

6 MR. MORRIS: Objection to the form of the  
7 question. I hope I don't miss my plane.

8 Q. (BY MR. RUKAVINA) You don't know that under  
9 Texas law if someone hits you with their car and causes  
10 you medical bills and your medical insurance pays those  
11 bills, that you can still sue them for the same  
12 damages?

13 MR. MORRIS: Objection to the form of the  
14 question.

15 THE WITNESS: I'm not familiar at any level  
16 of specificity with Texas law.

17 Q. (BY MR. RUKAVINA) Again, it just sounds  
18 wrong to you that you could go after someone after  
19 insurance pays, but you don't know legally one way or  
20 the other?

21 A. Correct. I'm not a lawyer or expert in Texas  
22 law. It feels wrong, yes.

23 Q. Okay. Going back to this email of yours,  
24 Exhibit 3, do you recall whether there was a similar  
25 email with respect to the \$5 million note?

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1 A. Yes, I am. I believe Kristin sent that one.

2 Q. Kristin sent that one?

3 A. I believe so.

4 Q. To whom?

5 A. Likely the same distribution group, but  
6 that's speculation.

7 Q. Did you see such an email in the last week or  
8 two?

9 A. I'm not certain, but probably. I have seen  
10 email communication on or around May 3, but I don't  
11 know specifically who all was on the email. I'm going  
12 off what I would expect to see.

13 MR. MORRIS: If you're really interested,  
14 it's right here. It was produced to you with  
15 Bates 3763. And if you'd like to question the witness.

16 MR. RUKAVINA: When was it produced?

17 MR. MORRIS: I can't tell you. It's part of  
18 the same package.

19 Q. (BY MR. RUKAVINA) So going back to this  
20 Exhibit 3, sir, why did you ask Kristin, can you or  
21 Hayley please prep a note for execution? Why them?

22 Remember, I was asking about what the course  
23 or procedure was at that point in time.

24 A. Yeah, so nomenclature, procedure, process.

25 I would say the informal process for these

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1 types of loans, they were frequent in nature, would be  
2 for someone on the corporate accounting team to prepare  
3 a note and have it executed.

4 Q. Okay. That was the standard course back  
5 then?

6 A. Again, I don't know what standard course  
7 means. That was fairly typical.

8 Q. Why would you not have asked someone in the  
9 Highland legal department to prepare a note?

10 A. Because this was a legally reviewed document  
11 as far as the form of the agreement. It's a one-page,  
12 two-paragraph form that had been used for a long time.

13 So the only thing that would change with  
14 respect to these notes would be the date, the amount,  
15 likely the rate. I can't think of anything else  
16 offhand that would have changed from note to note.

17 Q. After you asked Ms. Hendrix to prepare this  
18 note, did you have any further role with respect to the  
19 papering, preparation, or execution of that note?

20 A. Not that I can remember.

21 Q. Would you have had any role in having either  
22 or both of the notes actually signed electronically or  
23 by ink by Mr. Waterhouse?

24 A. Likely not, no.

25 Q. Do you know who decided to have

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1 Mr. Waterhouse as opposed to Mr. Dondero sign these two  
2 promissory notes?

3 A. I don't.

4 Q. On the \$5 million note, do you remember if  
5 you had any role with respect to its physical papering  
6 or execution?

7 A. Not that I recall.

8 Q. To the best of your memory, your role would  
9 have been done by instructing your team, hey, here is  
10 these new loans, go paper it up; is that accurate?

11 A. On the upfront side. I suppose my role would  
12 have also included on the back end making sure that the  
13 actual payment had occurred. But that would have been  
14 doing that realtime, seeing the funds went out, and  
15 that, most importantly, that the consent fee had been  
16 paid from HCMFA to the transfer agent.

17 Q. How did you or anyone on your team know -- so  
18 obviously, you know it's a \$2.4 million loan because  
19 that's what Waterhouse or Dondero told you; right?

20 How did you know it was a \$2.4 million loan?

21 MR. MORRIS: Objection. Asked and answered.

22 THE WITNESS: I knew that the NAV error was  
23 2 million, I think it was 398,000, somewhere in that  
24 ballpark. And that 2.4- had been authorized for that  
25 purpose.

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1 Q. (BY MR. RUKAVINA) Do you know who decided  
2 what the interest rate in this note would be, or that  
3 it would be a demand note as opposed to a term note?

4 A. I don't specifically know who made that  
5 decision. However, the common practice for fund  
6 advisors was to put -- was for the rate to equal the, I  
7 forget if it was the short-term or long-term AFR.

8 And for the note to be demand, that was just  
9 the standard -- that was the standard.

10 Q. And I think I asked this, but just if I  
11 didn't.

12 For either or both of these two notes, the  
13 2.4- and \$5 million note, did you have any role with  
14 respect to Mr. Waterhouse signing them?

15 A. No, not that I can remember. I don't think I  
16 did.

17 Q. And you don't remember doing anything to get  
18 his signatures?

19 A. Not that I recall.

20 Q. Nor would that have been something that you  
21 would expect that you would have a role with?

22 A. Certainly not in this instance. Maybe to the  
23 extent that nobody else was around and it was time  
24 sensitive, but that wouldn't have been the case with  
25 these, I don't believe.

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1 Q. Did you have any understanding in early May  
2 of 2019 as to whether HCMFA was solvent or insolvent?

3 MR. MORRIS: Objection to the form of the  
4 question.

5 THE WITNESS: Whether HCMFA was solvent or  
6 insolvent? I'm not a solvency expert, so I don't know  
7 that I could even attempt to answer that.

8 Q. (BY MR. RUKAVINA) Did you have an  
9 understanding as far as HCMFA goes on May 2, 2019, that  
10 its liabilities exceeded its assets?

11 A. I don't remember specifically where it stood  
12 on assets versus liabilities.

13 Q. Do you have any memory that by May 2, 2019,  
14 the debtor had taken a couple prior demand notes from  
15 HCMFA and made them not collectible prior to May 31,  
16 2021?

17 A. I know what you're referring to. I wouldn't  
18 characterize it that way.

19 Q. How would you characterize it?

20 A. I recall that there was a financial support  
21 acknowledgment, I think it was the name of the  
22 acknowledgment.

23 That described -- I can't remember if it  
24 described those two notes specifically or just referred  
25 to them, that there would not be collection sought on

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1 those until May 31 of 2021.

2 Q. Do you remember why that document was done?

3 A. My recollection, and it could have been done  
4 for other reasons, but my recollection of it was that  
5 it was primarily audit-driven.

6 For the auditors to be comfortable that these  
7 notes weren't going to be just called and FA not have  
8 the ability to pay them right away.

9 Q. Because it's true in April or May of 2019  
10 HCMFA didn't have the ability to pay those notes;  
11 correct?

12 A. It didn't have enough cash to pay those.

13 Q. And I think you mentioned before that in  
14 May 2019 the auditors at the Highland level were  
15 talking about rolling up prior demand notes into term  
16 notes so the debtor would at least get some regular  
17 cash flow; correct?

18 MR. MORRIS: Objection to the form of the  
19 question.

20 THE WITNESS: No.

21 Q. (BY MR. RUKAVINA) So you recall that -- I'm  
22 sorry, that was 2017. I was wrong; right?

23 A. Correct.

24 Q. So I guess here is my question, and I'm  
25 struggling to understand this.



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1           So why would Highland be loaning an  
2 additional \$7.4 million in early May of 2019 to HCMFA  
3 when HCMFA already was then unable to repay its debts  
4 to Highland?

5           MR. MORRIS: Objection to the form of the  
6 question.

7           THE WITNESS: Yeah, I kind of reject the  
8 premise of the question, and these are all controlled  
9 by Jim. And it's completely within his power at any  
10 point in time to make any payment on any of the loans,  
11 depending on where priorities sit.

12           So the idea that HCMFA -- that Highland would  
13 be doing a credit analysis on HCMFA, determining that it  
14 was unable to make that payment and, therefore, this is  
15 a bad note, is a completely foreign, preposterous  
16 concept at that time.

17           Q. (BY MR. RUKAVINA) And in May of 2019 isn't  
18 it also, sir, the case that Mr. Dondero could have,  
19 right or wrong, agree or disagree, said, that 7.4- is  
20 going to compensate HCMFA for the NAV error as opposed  
21 to being a loan?

22           A. No.

23           Q. That's not possible?

24           A. No.

25           Q. And why is that not possible?

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1           A.     As we discussed, the 5-, there's absolutely  
2 no construct where that can be compensation for an NAV  
3 error. It's not a NAV error. It's a consent fee.  
4 Highland has absolutely no responsibility for that.

5                     Highland also has no responsibility for the  
6 2.4-, but if you want to assume that it did, that's  
7 completely not the practice. It was Jim's preference  
8 to do these via loans, and that's how it was booked.

9           Q.     You're saying on the one hand Mr. Dondero can  
10 absolutely control that one entity make a loan to  
11 another, irrespective of credit worthiness, but he  
12 can't decide that a transfer is compensation as opposed  
13 to a loan?

14                     MR. MORRIS: Objection to the form of the  
15 question. Argumentative.

16                     THE WITNESS: If he wants to call  
17 \$7.4 million compensation to himself or to HCMFA, I  
18 just don't know how he does that. This is me being an  
19 accountant. I don't know how that's possible.

20                     If he wants to pay himself a \$7.4 million  
21 bonus from HCMFA, fine, he has the power to do that. If  
22 he wants Highland to inject 7.4 million of equity into  
23 HCMFA, he has the power to do that.

24                     But sending the 7.4 million and calling it  
25 something else, I don't know how he could do that.

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1 Q. (BY MR. RUKAVINA) So it had to have been a  
2 loan; correct?

3 MR. MORRIS: Objection to the form of the  
4 question.

5 THE WITNESS: In these instances I know it to  
6 have been a loan.

7 Q. (BY MR. RUKAVINA) Because of what  
8 Mr. Waterhouse told you?

9 MR. MORRIS: Objection to the form of the  
10 question. Asked and answered.

11 THE WITNESS: Yeah, it was my understanding  
12 that these were loans.

13 Q. (BY MR. RUKAVINA) You know these 7.4- to be  
14 loans even though you never heard Mr. Dondero say that  
15 to you?

16 A. Yes, although to be fair, I don't know  
17 whether I ever heard Mr. Dondero. It's possible he did  
18 say it.

19 MR. MORRIS: Objection. Withdrawn.

20 Q. (BY MR. RUKAVINA) You have no memory that on  
21 or before May 4, 2019 you heard Mr. Dondero say that  
22 the \$2.4 million transfer and/or the \$5 million  
23 transfer to HCMFA were loans?

24 A. I have no specific recollection, but such a  
25 conversation is just off the reservation impossible.

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1 That there's no way -- there's no way -- there's no way  
2 that it would have been described that way and there's  
3 a hundred percent that it's loan.

4 Q. Do you have any memory discussing prior --

5 MR. MORRIS: Objection. Asked and answered.  
6 He's answered this a thousand times.

7 Q. (BY MR. RUKAVINA) Do you have any memory on  
8 or before May 2, 2019 discussing the \$2.4 million  
9 transfer with Mr. Dondero at all?

10 A. I do recall, I don't remember the time, but I  
11 do remember discussing the NAV error in general terms  
12 and the potential magnitude of that. I don't remember  
13 specifically when that occurred.

14 Q. At least in your discussion with Mr. Dondero,  
15 the \$2.4 million loan or note was somehow linked to the  
16 NAV error?

17 A. Linked to the NAV error is strong. It  
18 related to the NAV error from the standpoint that  
19 that's what Highland was loaning HCMFA the money for,  
20 because HCMFA couldn't otherwise make the payment  
21 itself.

22 Q. You just said Highland was loaning the money  
23 for. Are you remembering now Mr. Dondero saying that  
24 or are you just extrapolating?

25 A. No, I'm explaining rationally what the

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1 situation was.

2 Q. Do you remember on or before May 3, 2019  
3 discussing the \$5 million transfer with Mr. Dondero?

4 A. Again, in general terms. I couldn't tell you  
5 a time period, but this was something that, between  
6 Frank and I, we had put on Jim's radar that this would  
7 be a cash need in the future. I couldn't specify  
8 specifically when that happened.

9 Q. Okay. You have no present memory of  
10 discussing that issue with Mr. Dondero on or before  
11 May 3, 2019? It must have happened but you have no  
12 memory?

13 MR. MORRIS: Objection to the form of the  
14 question.

15 THE WITNESS: We discussed that there would  
16 be a consent fee payable from HCMFA. We would have  
17 discussed -- and again, I don't remember where I was,  
18 what day it was, the specifics around the conversation.

19 But I know that we had conversations  
20 pertaining to cash, because this was a large need for --  
21 cash need for HCMFA to satisfy this, and this was an  
22 important payment.

23 And neither HCMFA nor Highland had the  
24 wherewithal to make that payment. The only way that  
25 those could make the payment was by Jim Dondero repaying

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1 loans that he owed to HCMLP. So we absolutely discussed  
2 that with Jim Dondero.

3 Q. (BY MR. RUKAVINA) And with respect to  
4 everything that we just talked about and your  
5 recollection, you still don't remember Mr. Dondero  
6 saying to you or Mr. Waterhouse one way or the other  
7 that one or both of these transfers were loans?

8 MR. MORRIS: Objection to the form of the  
9 question. Asked and answered.

10 THE WITNESS: Yeah, again --

11 Q. (BY MR. RUKAVINA) Just yes or no. This is a  
12 yes-or-no question.

13 MR. MORRIS: Let him answer the question.

14 MR. RUKAVINA: If he'll answer the question  
15 I'll stop asking him --

16 MR. MORRIS: He's allowed --

17 Q. (BY MR. RUKAVINA) The answer [verbatim] is,  
18 do you remember --

19 A. I don't remember Jim's exact words two and a  
20 half years ago in respect to authorizing these  
21 payments. So to answer your question, no, I don't  
22 specifically remember him saying these are loans.

23 But every other fact around this tells me  
24 that we did have that conversation and that was the  
25 conclusion and that was the direction.

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1 Q. So it's possible that Mr. Dondero told no one  
2 that these were loans but because y'all have been doing  
3 it this way for 10 years, that everyone, all of you  
4 CPAs, understood that it had to be a loan?

5 MR. MORRIS: Objection to the form of the  
6 question.

7 Q. (BY MR. RUKAVINA) My question is, is that  
8 possible?

9 A. I really don't think it's possible. I  
10 suppose people say anything is possible. Again, two  
11 and a half years ago, I'm certain that that was the  
12 intent at the time and I'm sure it was communicated as  
13 such. I just don't have a specific recollection.

14 MR. RUKAVINA: Thank you.

15 I'll pass the witness.

16 MR. MORRIS: Michael, do you have any  
17 questions?

18 MR. AIGEN: I do. I assume you want me to  
19 start now to do my best to be done at 5:00?

20 MR. MORRIS: Yes, please.

21 EXAMINATION

22 Q. (BY MR. AIGEN) Good afternoon, Mr. Klos. My  
23 name is Michael Aigen with the Stinson law firm. I  
24 represent Mr. Dondero, HCMS, and HCRE.

25 How are you today?

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1 A. I'm very good, thank you.

2 Q. First topic I wanted to ask you about is the  
3 defense raised by some of the defendants related to an  
4 oral agreement and condition subsequent.

5 So my question for you generally is, are you  
6 aware that some of the defendants in these proceedings  
7 have raised a defense that there was a subsequent oral  
8 agreement allowing notes to be potentially forgiven if  
9 certain events occur?

10 A. Yeah, I'm generally aware of the defenses  
11 sitting here today.

12 Q. And how are you generally aware of this  
13 defense?

14 A. I don't know with specificity. Potentially  
15 through just document flow on the bankruptcy side,  
16 potentially with conversations internally or with  
17 counsel. But I generally understand them to have been  
18 raised, the defenses that is.

19 Q. And I don't want to get into conversations  
20 with counsel. I'm not allowed to do that.

21 Let me ask you, have you had any  
22 conversations with anyone other than counsel about this  
23 subsequent oral agreement defense?

24 A. I have had general conversations with  
25 Mr. Seery about it. And other than that, nothing



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1 substantive.

2 Q. And what did you discuss about this with  
3 Mr. Seery?

4 A. I've discussed with him, I hate to phrase it  
5 this way, the ridiculousness of the defense. Under  
6 oath. I've discussed my general understanding of what  
7 is being asserted as a defense.

8 Which is that there was some sort of an oral  
9 agreement between Jim and his sister at some point in  
10 the past pertaining to forgiveness of certain  
11 promissory notes that was conditional upon Highland  
12 monetizing any of three PE assets for any amount above  
13 cost.

14 Q. And is it fair to say that prior to these  
15 lawsuits being brought, you weren't aware of any oral  
16 agreements related to the promissory notes related to  
17 potential forgiveness?

18 A. That's correct. Not that I can remember, and  
19 I think I would remember.

20 Q. And other than your conversations with  
21 Mr. Seery and counsel, you haven't had any  
22 conversations with anyone else about these alleged oral  
23 agreements; is that fair to say?

24 A. I'm not sure I understand the question.

25 Q. You told me you may have had questions with

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1 counsel about these oral agreements defense, and you  
2 told me about conversations with Mr. Seery, so I'm  
3 trying to close that topic.

4 Was there anyone else you had any  
5 conversations with about this alleged oral agreement?

6 A. Like I said before, nothing of substance.  
7 I've probably mentioned it in passing to other  
8 employees, this is what I understand is being asserted  
9 in this, but nothing of substance.

10 Q. Do you have any personal knowledge as to  
11 whether Mr. Dondero or Ms. Dondero entered into any  
12 type of oral agreement prior to the bankruptcy?

13 A. No, not other than what's been pled, or  
14 whatever the terminology is.

15 Q. I want to talk a little bit about, you  
16 touched on earlier, you gave some testimony about how  
17 in -- there were certain term loans that had payments  
18 due in December or on or about December 31, 2020.

19 Do you remember talking about that?

20 A. Yeah, generally.

21 Q. And I don't know if you're specifically  
22 referring to these loans, but is it also your  
23 understanding that HCMS and HCRE also had payments that  
24 were due on December 31, 2020?

25 A. Yes.

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1 Q. Is it fair to say that if those payments were  
2 to be made, it would have been Ms. Hendrix that would  
3 have gone and effectuated those payments?

4 MR. MORRIS: Objection to the form of the  
5 question.

6 THE WITNESS: Can you remind me the entities  
7 again.

8 Q. (BY MR. AIGEN) Sorry. HCMS and HCRE  
9 Partners.

10 A. HCMS, yes. HCRE, I'm not sure, maybe.

11 Q. Why might it have been different?

12 A. I just don't recall who had the, you know,  
13 kind of bank access to effectuate that payment. I  
14 think Kristin did but I'm not certain.

15 Q. It wouldn't have been you; is that fair to  
16 say?

17 A. Correct. It would not have been me.

18 Q. And if Ms. Hendrix testified that the  
19 instruction she received in December 2020 about not  
20 making payments related only to the Advisors and not to  
21 HMS or HCRE, would you have any reason to disagree with  
22 her?

23 MR. MORRIS: Objection to the form of the  
24 question.

25 THE WITNESS: Yeah, I was struggling with

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1 that question. There was a lot to it. If you don't  
2 mind.

3 Q. (BY MR. AIGEN) Okay. I'll repeat it. Maybe  
4 that will help.

5 MR. MORRIS: Why don't you ask him about his  
6 knowledge, instead of Kristin's. You had her as a  
7 witness.

8 I'll continue to object. I don't know why  
9 you're asking him about her knowledge.

10 MR. AIGEN: Do you want to keep coaching him?

11 MR. MORRIS: No, I'm trying to coach you.

12 MR. AIGEN: Oh, thanks. That's good.

13 Appreciate if you stop coaching your witness.

14 Q. (BY MR. AIGEN) If Ms. Hendrix testified that  
15 the instructions she received in December 2020  
16 regarding not making any more payments related only to  
17 the Advisors and not to HMS or HCRE, would you have any  
18 reason to disagree with her?

19 MR. MORRIS: Objection to the form of the  
20 question.

21 THE WITNESS: I have no reason to question  
22 Kristin's testimony. I'm sure she gave truthful  
23 testimony.

24 Q. (BY MR. AIGEN) Are you aware or not of  
25 whether Ms. Hendrix was told by Mr. Waterhouse not to

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1 make payments from certain entities in December of  
2 2020?

3 MR. MORRIS: Objection to the form of the  
4 question.

5 THE WITNESS: Yeah, I'm aware, and I think I  
6 spoke to that earlier of the instruction that had come  
7 down from Dondero through Frank to Kristin, and I was  
8 certainly aware of it.

9 And I'm -- and I think I spoke to the fact  
10 that, you know, certainly hearing it from a person who,  
11 as I said before, wasn't really on the team at that  
12 point, it was certainly my understanding that that was a  
13 global instruction at the time.

14 Q. (BY MR. AIGEN) And I want to get into what  
15 was actually said and what you remember, so let me ask  
16 you this.

17 This instruction that came down started from  
18 Jim and went to Frank. Is that your understanding?

19 A. That's my understanding.

20 Q. You weren't there during that discussion I  
21 assume; is that correct?

22 A. Correct, I was not.

23 Q. And then Frank gave an instruction to  
24 Kristin; is that your recollection?

25 MR. MORRIS: Objection to the form of the

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1 question.

2 THE WITNESS: Yeah, it's my understanding  
3 that Frank informed Kristin of that instruction.

4 Q. (BY MR. AIGEN) Were you there when Frank  
5 provided this instruction to Kristin?

6 A. I don't believe I was.

7 Q. Then can I ask, how did you become aware that  
8 Frank had given this instruction to Kristin?

9 A. Through subsequent conversations with Frank  
10 and Kristin. As I said before, I don't recall if it  
11 was the three of us or me and Frank or me and Kristin.  
12 But subsequent conversations.

13 Q. Are we talking about conversations back in  
14 2020 or after the bankruptcy?

15 MR. MORRIS: Objection to the form of the  
16 question.

17 THE WITNESS: During 2020, December of 2020.

18 Q. (BY MR. AIGEN) Sitting here today, can you  
19 say with a hundred percent certainty that the  
20 instruction related to all of the entities as opposed  
21 to just Advisors?

22 A. So as you pointed out, I was not party to the  
23 direction, so I have no way of knowing with any sort of  
24 specificity what the direction actually was. I just  
25 know how it was conveyed to me and how I understood it.

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1 Q. When you say it was conveyed to you, are you  
2 talking about subsequent discussions that you had with  
3 Ms. Hendrix and Mr. Waterhouse after they talked to  
4 each other?

5 A. Yes.

6 Q. Sitting here today, can you tell me for sure  
7 that one of them told you that this instruction related  
8 to all of the entities, as opposed to just the  
9 Advisors?

10 A. No, I can't say that with certainty, but I  
11 think that that was the case. But, again, I can't say  
12 with certainty.

13 Q. Would you defer to Mr. Waterhouse and  
14 Ms. Hendrix over what the specific instructions were?

15 MR. MORRIS: Objection to the form of the  
16 question.

17 THE WITNESS: Like I said, I wasn't part of  
18 the conversation, so I would defer to people who  
19 received the directions more directly.

20 Q. (BY MR. AIGEN) And you're not aware of  
21 anything in writing or anything that reflects these  
22 instructions on whether to pay or not to pay certain  
23 payments in December of 2020?

24 A. No, I'm not aware of anything in writing.

25 Q. And let's change topics for a second here.

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1 I want to throw out a term. Are you familiar  
2 with the term "NAV ratio trigger period" as it was used  
3 in --

4 A. In a very, very general sense, yes.

5 Q. And in a general sense what does that term  
6 mean to you?

7 A. It's a term I recognize from the limited  
8 partnership agreement of HCMLP. It's a defined term in  
9 that agreement.

10 Q. To your knowledge, was the NAV ratio trigger  
11 period ever reached or triggered prior to the Highland  
12 bankruptcy?

13 A. I don't know the definition, so I don't know  
14 based on the definition whether it had or hadn't.

15 Q. Sitting here today, though, it's not your  
16 belief, based on your experience, that it was  
17 triggered; is that fair to say?

18 MR. MORRIS: Objection to the form of the  
19 question.

20 THE WITNESS: I don't know the consequence of  
21 being in a trigger period, I guess is what -- how I'm  
22 trying to answer your question.

23 Q. (BY MR. AIGEN) Have you ever had any  
24 conversations with Nancy Dondero?

25 A. Yes.



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1 Q. Generally, how many and what was the  
2 reasoning?

3 A. Probably less than five. I think maybe only  
4 one or two that I can really remember.

5 Q. At a high level what were those conversations  
6 about?

7 A. From my recollection of my conversations with  
8 her, they pertained to the DRIP, which is a dividend  
9 reinvestment program that I helped.

10 Q. And approximately when were these  
11 conversations?

12 A. I don't know. Sometime between 2017 and  
13 probably 2019. I couldn't tell you with any  
14 specificity. These were very informal.

15 Q. Fair to say that you've never had any  
16 conversations with Nancy Dondero about any of the loans  
17 at issue in this case?

18 A. No, no, no, I've never had a conversation  
19 with her like that.

20 Q. And fair to say that you've never had any  
21 conversations with Nancy Dondero about compensation for  
22 Jim or any other officers at Highland?

23 A. Correct.

24 MR. AIGEN: Why don't we go off the record  
25 for two minutes. I think I'm either done or about

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1 done.

2 (Off the record.)

3 Q. (BY MR. AIGEN) You understand you're still  
4 under oath?

5 A. Yes.

6 Q. Are you aware of any loans that Highland has  
7 made to any employees or officers that were forgiven in  
8 all or in part?

9 A. Yes.

10 Q. Can you tell me who?

11 A. I don't know that this will be a complete  
12 list, but there were a few employees in the kind of  
13 late aughts, maybe 2010, 2011 frame.

14 Q. Do you know the names?

15 A. One was Jack Yang. Another, I'm not sure if  
16 it was forgiven or not, that's why I'm hesitating, but  
17 it was Tim Lawler. I think his was forgiven in part or  
18 in full, but I'm not a hundred percent certain.

19 Q. And any other individuals that received loans  
20 that were forgiven in part that you're aware of?

21 A. Not that I recall, but there could be others.  
22 Some of this is very, very old.

23 Q. Changing topics here a little bit, I'm going  
24 to combine two entities to try to speed this up. If  
25 you need to separate, that's fine.

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1 Can you just generally explain to me what  
2 services Highland Capital Management provided for  
3 HCMS and HCRE?

4 A. For HCMS -- I do need to separate these a  
5 little bit. For HCMS, really full-service accounting,  
6 tax, treasury, cash payments. I said tax. Valuation.  
7 Nothing personnel-wise because they didn't have any  
8 employees.

9 That's all I can think of right off the top  
10 of my head, but I could be missing some.

11 Q. And what about HCRE? How is that different?

12 A. Similar, except different types of assets.  
13 So more real estate, so less heavy.

14 Maybe not necessarily differences in terms of  
15 the types of services, but services would have, I'd  
16 say, more cash activity, more variety of investments,  
17 which triggers different types of activities going on  
18 at those entities.

19 But similar in terms of tax operations,  
20 making payments. HCRE didn't have employees, so no  
21 payroll. So these would be the broad areas that I  
22 would think about.

23 Q. And you mentioned making payments. Would one  
24 of those services that Highland provided for these two  
25 entities include making loan payments on the term loans

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1 like the term loans at issue in these proceedings?

2 MR. MORRIS: Objection to the form of the  
3 question.

4 THE WITNESS: I think I mentioned before, I  
5 couldn't remember whether or not Kristin was authorized  
6 to make payments with respect to HCRE. I think she  
7 probably was, but I don't know that with certainty.

8 But, you know, for services, certainly Kristin  
9 and her team would be responsible for making those  
10 payments, subject to the proper authorization.

11 Q. (BY MR. AIGEN) And I'm sorry if I asked this  
12 before. If it wasn't Kristin for HCRE, do you have an  
13 idea who it would have been?

14 A. If not Kristin, it would have been Melissa  
15 Schroth.

16 Q. And how were those responsibilities split up?  
17 What entities was Melissa Schroth responsible for?

18 A. Generally speaking, Melissa was more  
19 responsible for entities that were really, like -- I'm  
20 going to use this in the most general sense, like Jim  
21 entities, Jim's trusts, Jim personally.

22 And for HCRE it was kind of in the middle.  
23 When it started out it kind of was more Jim world and  
24 then over time it got more complex.

25 And as entities got more complex over time

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1 they tend to get transitioned from Melissa to corporate  
2 accounting. And when they got really complex over to  
3 another group of fund accountants.

4 So this is one that was, at its beginning,  
5 Melissa was the, called primary accountant. And at  
6 some point in time that transitioned to the corporate  
7 accounting team. I can't remember when the cash  
8 process kind of cut over.

9 Q. Is there a list somewhere saying Melissa is  
10 responsible for these, Kristin for the others, or is it  
11 just more of a pattern or matter of practice?

12 A. More of a matter of practice. If you're  
13 responsible for an entity, you're responsible. If  
14 you're not, then you're not.

15 MR. AIGEN: That's all the questions I have.  
16 Thank you for your time.

17 THE WITNESS: Thank you.

18 EXAMINATION

19 Q. (BY MR. MORRIS) Just a few, Mr. Klos. Let's  
20 pick up where Mr. Aigen left off.

21 To the best of your knowledge, did HCMS have  
22 a shared services agreement with Highland?

23 A. No, it didn't that I'm aware of.

24 Q. But you described certain services that HCMLP  
25 provided to HCMS; is that right?

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1 A. Yes.

2 Q. Do you know whether HCMFA ever compensated --  
3 do you know whether HCMS ever compensated HCMLP for any  
4 of those services that HCMLP provided?

5 A. No, it didn't.

6 Q. You mentioned HCRE. To the best of your  
7 knowledge, did HCRE have a shared services agreement  
8 with Highland Capital Management, LP?

9 A. No, it didn't.

10 Q. Did HCRE provide the services that --  
11 withdrawn.

12 Did HCMLP provide the services to HCRE that  
13 you just described?

14 A. Yes.

15 Q. Did HCRE ever compensate HCMLP for any of the  
16 services that HCMLP provided?

17 A. No.

18 Q. Okay. Mr. Rukavina asked you some questions  
19 about payments that were made on the NexPoint loan in  
20 the first half of 2019.

21 Do you remember that?

22 A. Yes, generally.

23 Q. Okay. Notwithstanding those payments, did  
24 your group continue to carry on its books and records  
25 NexPoint's obligation to make the installment payment

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1 that was due at the end of the year?

2 A. Yes, we continued to track it through our  
3 interest schedules and through cash.

4 Q. So in the debtor's books and records is there  
5 any evidence that the payments that were made in early  
6 2019 were intended to relieve NexPoint's obligation to  
7 make the installment payment due at the end of the  
8 year?

9 MR. RUKAVINA: Objection. Best evidence.

10 THE WITNESS: No, I don't believe so.

11 Q. (BY MR. MORRIS) Did you have a conversation  
12 with anybody at any time in the year 2019 about whether  
13 the payments made earlier in the year on behalf of  
14 NexPoint would eliminate or suspend its obligation --  
15 withdrawn.

16 Did you have any conversation with anybody --  
17 I think I screwed up the dates. Going to have to start  
18 over.

19 Let me ask better questions.

20 You looked with Mr. Rukavina at certain  
21 payments that were made in early 2019 with respect to  
22 the NexPoint note.

23 Do I have that right?

24 A. Yes.

25 Q. Notwithstanding those payments, did NexPoint

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1 make the installment payment that was due at the end of  
2 2019?

3 MR. RUKAVINA: Objection. Calls for a legal  
4 conclusion.

5 THE WITNESS: It did make the payment that  
6 was due at the end of 2019.

7 Q. (BY MR. MORRIS) And the payment that it made  
8 at the end of 2019, was that the annual installment  
9 payment that was called for in the note itself?

10 MR. RUKAVINA: Objection. Legal conclusion.

11 THE WITNESS: Yes, it was a payment pursuant  
12 to the note.

13 Q. (BY MR. MORRIS) Did anybody ever tell you at  
14 any time prior to the commencement of this lawsuit that  
15 any prior payment by or on behalf of NexPoint relieved  
16 it of any obligation to pay the installment payment due  
17 at the end of 2020?

18 A. No.

19 Q. And did in fact -- is it your understanding  
20 that Mr. Dondero specifically authorized Highland to  
21 effectuate a payment on NexPoint's behalf in mid  
22 January 2021?

23 A. I don't have specific knowledge, but I know  
24 that to have occurred.

25 Q. Okay. Did anybody ever tell you in 2021 --



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1 withdrawn.

2 Did anybody tell you in December 2020 or  
3 December -- or January 2021 that NexPoint didn't have  
4 to make the installment payment at year end 2020  
5 because of some prior prepayment?

6 A. No.

7 Q. Can you think of any reason -- withdrawn.

8 Did you ever hear Mr. Dondero -- withdrawn.

9 Did you ever see anything in writing where  
10 NexPoint ever contended, prior to February 1, 2021,  
11 that it had no obligation to make the payment due at  
12 the end of 2020 because of some prepayment issue?

13 A. No, not that I remember.

14 Q. Can you think of any reason why Mr. Dondero  
15 would have authorized a payment by NexPoint to HCMLP on  
16 account of the note in January of 2021 if he actually  
17 believed at that time that no obligation was due  
18 because of a prior prepayment?

19 MR. RUKAVINA: Objection. Speculation, lacks  
20 foundation.

21 THE WITNESS: No.

22 Q. (BY MR. MORRIS) Does it make any sense to  
23 you as an accountant that you would pay a seven-figure  
24 sum of money that you didn't think was due and owing?

25 A. No, that does not make sense to me.

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1 Q. Can you get Exhibit 13, please.

2 A. Got it.

3 Q. You were asked some questions about  
4 paragraph 3.

5 Do you see that?

6 A. Yes.

7 Q. Does paragraph 3 mention annual installment  
8 payments at all?

9 A. No, I'm not seeing it.

10 Q. Does paragraph 3 state in any way that a  
11 prepayment as described in that paragraph would relieve  
12 the maker of the obligation to make annual installment  
13 payments?

14 A. No.

15 Q. Can you turn to the next page and look at  
16 paragraph 5.

17 Are you familiar with that paragraph at all?

18 A. No. I mean, I've seen it before, but this  
19 is, as I said before, this is a provision that probably  
20 would have been in most, if not all, of these types of  
21 notes.

22 Q. Can you get Exhibit 3, please. This is your  
23 email dated May 2, 2019.

24 Do I have that right?

25 A. Yes.

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1 Q. And you sent it to the corporate accounting  
2 email group; is that right?

3 A. I did.

4 Q. And to the best of your recollection, was  
5 Mr. Waterhouse included in that email group?

6 A. Yes, absolutely.

7 Q. And did you instruct the corporate accounting  
8 team to transfer \$2.4 million from HCMLP to HCMFA on  
9 May 2, 2019?

10 A. Yes, specifically Blair, but yes, for the  
11 team as well.

12 Q. The whole team was aware of this?

13 A. The whole team is on the email, and I'm  
14 sending to Blair, who is the AP person, to please set  
15 up the payment.

16 Q. Is it fair to say that you're being  
17 completely transparent here by including the entire  
18 corporate accounting group on this email?

19 A. Yes.

20 Q. And did you tell the entire corporate  
21 accounting group that this transaction would be a,  
22 quote, new interco loan?

23 A. Yes, that's what the email says.

24 Q. Do you have any reason to believe that  
25 Mr. Waterhouse didn't get this?

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1 A. No, he got this.

2 Q. And did Mr. Waterhouse tell you at any time  
3 in the history of the world that this \$2.4 million  
4 should not have been booked as a loan?

5 A. No.

6 Q. Did Mr. Dondero tell you at any moment in the  
7 history of the world that this transaction should not  
8 have been booked as a loan?

9 A. No.

10 Q. You mentioned that there was an audit that  
11 followed shortly thereafter?

12 A. Yes.

13 Q. Are you familiar with the debtor's audited  
14 financial statements for the period ending 2018?

15 A. Yes, generally. Not total recall, but yes.

16 Q. Are you aware that this loan was included as  
17 a subsequent event in the debtor's audited financial  
18 statements?

19 A. Yes.

20 MR. RUKAVINA: Objection. Best evidence.

21 Q. (BY MR. MORRIS) Did Mr. Dondero or  
22 Mr. Waterhouse or anybody ever tell you that the debtor  
23 should not have included this \$2.4 million loan in its  
24 audited financial statements?

25 MR. RUKAVINA: Objection. Best evidence.

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1 THE WITNESS: No.

2 Q. (BY MR. MORRIS) Okay. And the next day  
3 there was another loan; right?

4 A. Yes.

5 Q. I'm going to show you here a document that's  
6 been produced.

7 MR. RUKAVINA: Would you email it to me and I  
8 can print it out for the court reporter.

9 MR. MORRIS: You want to come over here and  
10 look --

11 MR. RUKAVINA: I know it. I'm just thinking  
12 that we can append it to the record right now.

13 MR. MORRIS: It's eight pages, so it's part  
14 of a whole production.

15 MR. RUKAVINA: But it's just one email?

16 MR. MORRIS: Just one email that I'm talking  
17 about. So we're looking at Bates stamp D-CNL003763.

18 And I'll email it to you when we're done here.  
19 And you're welcome to come over here if you'd like to  
20 see it.

21 Q. (BY MR. MORRIS) Mr. Klos, can you take a  
22 look at the email that I have on my screen.

23 A. Yes.

24 Q. And do you see that it's an email from  
25 Kristin Hendrix to the corporate accounting group on

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1 Friday, May 3?

2 A. Yes.

3 Q. And were you also included in the corporate  
4 accounting email string?

5 A. Yes.

6 Q. Can you read the email out loud, please.

7 A. It says, Blair, please set up a wire from  
8 HCMLP to HCMFA for 5 million as a new loan,  
9 parentheses, 4.4 million should be coming in from Jim  
10 soon. Hayley, please add this to your loan tracker. I  
11 will paper the loan.

12 Q. So based on that email, did you understand on  
13 May 3 that HCMLP was going to loan \$5 million to HCMFA?

14 A. Yes, HCMFA.

15 Q. And did you understand that Kristin  
16 specifically told the corporate accounting group that  
17 she would take responsibility for papering the loan?

18 A. Yes, that's what she says.

19 Q. Do you recall whether Mr. Waterhouse ever  
20 objected to any aspect of Kristin's email?

21 A. He didn't.

22 Q. Do you recall in the history of the world  
23 whether Mr. Waterhouse ever told you that this  
24 \$5 million transaction should not have been booked as a  
25 loan?

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1 A. No.

2 Q. Did anybody in the history of the world ever  
3 raise a question to you as to whether or not Kristin  
4 was authorized to paper the loan, as she describes it  
5 in this particular email?

6 A. No.

7 Q. Do you know if this \$5 million loan was also  
8 included in the debtor's audited financial statements?

9 MR. RUKAVINA: Objection. Best evidence.

10 THE WITNESS: Yes. Again, subsequent event.

11 Q. (BY MR. MORRIS) Okay. And did anybody in  
12 the history of the world ever tell you that Highland  
13 should not have included as a subsequent event in its  
14 2018 audited financial statement this \$5 million loan?

15 A. No.

16 MR. RUKAVINA: Objection. Best evidence.

17 THE WITNESS: No.

18 Q. (BY MR. MORRIS) Do you know if HCMFA had its  
19 financial statements audited?

20 A. It did.

21 Q. And are you generally familiar with those  
22 financial statements?

23 A. Yes.

24 Q. Are you aware that these two loans totaling  
25 \$7.4 million were included in HCMFA's audited financial

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1 statements as a subsequent event for the period ended  
2 December 31, 2018?

3 A. Yes.

4 MR. RUKAVINA: Objection. Best evidence.

5 Q. (BY MR. MORRIS) Did anybody in the history  
6 of the world ever tell you that HCMFA should not have  
7 included as a subsequent event the borrowing of the  
8 money reflected in these loans?

9 MR. RUKAVINA: Objection. Best evidence.

10 THE WITNESS: No, no one said that.

11 Q. (BY MR. MORRIS) Do you know if HCMFA  
12 included these loans as a liability on its balance  
13 sheet?

14 A. It did.

15 MR. RUKAVINA: Objection. Move to strike.  
16 Best evidence.

17 Q. (BY MR. MORRIS) Did anyone in the history of  
18 the world ever tell you that HCMFA should not have  
19 included these loans as a liability on its balance  
20 sheet?

21 MR. RUKAVINA: Objection. Best evidence.

22 THE WITNESS: No.

23 Q. (BY MR. MORRIS) Okay. Do you recall that in  
24 October of 2020 HCMFA and NexPoint made a report to the  
25 retail board?



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1 A. Yes.

2 Q. And are you aware that that's part of the  
3 annual review process?

4 A. Yes, it's the 15(c) process.

5 Q. By the way, as we're talking about these  
6 issues, did Mr. Waterhouse have -- was he an officer of  
7 HCMFA in 2019 and 2020?

8 A. Yes.

9 Q. And what's your understanding as to the  
10 office he held?

11 A. Treasurer, I believe.

12 Q. And do you know if Mr. Dondero held an  
13 officer position with respect to each of the Advisors?

14 A. He did.

15 Q. What position did he hold?

16 A. I don't recall with certainty, but I believe  
17 president.

18 Q. As officers of those two entities, do you  
19 have any knowledge as to whether they participated in  
20 the communications with the retail board in the fall of  
21 2020?

22 A. I believe Jim and Frank both did.

23 Q. And do you know whether the retail board  
24 asked the Advisors for a report on all obligations due  
25 and owing to HCMLP and affiliates?

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1           A.     They asked for financials, I believe as of  
2     6/30 as part of that process.

3           Q.     And are you aware as to whether or not the  
4     financials that were provided to the retail board  
5     included, among other things, the \$7.4 million in notes  
6     that were -- that we're talking about here?

7           A.     Yes, those financials would have included  
8     those amounts as liabilities to HCMLP.

9           Q.     Did Mr. Dondero or Mr. Waterhouse ever tell  
10    you or anybody to your knowledge that the Advisors  
11    should not have told the retail boards that they were  
12    obligated to pay under those two notes?

13          A.     No.

14          Q.     Let's talk about loan forgiveness for a  
15    moment.

16                 How long have you been with the company?

17          A.     March of 2009.

18          Q.     At any time since you've been employed by  
19    Highland, has Highland ever forgiven a promissory note  
20    that it held where the maker was a corporate affiliate?

21          A.     Not that I can recall.

22          Q.     Have you ever heard prior -- has anybody ever  
23    told you that before you joined the company, Highland  
24    had ever forgiven in whole or in part any note that it  
25    held where the maker was a corporate affiliate?

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1 A. Not that I'm aware of.

2 Q. You referred to a couple of loans that were  
3 given to individuals earlier.

4 Do you remember that?

5 A. Yes.

6 Q. What's the biggest loan that you can recall  
7 Highland ever forgiving?

8 A. The largest one that I can remember was  
9 a half-million dollars, 500,000.

10 Q. So you have no knowledge of any loan ever  
11 being forgiven where the principal amount forgiven  
12 exceeded \$500,000; is that right?

13 A. Not that I'm aware of.

14 Q. And when is the last loan that Highland  
15 forgave in whole or in part to one of its officers or  
16 employees that you can recall?

17 A. I don't know a specific year, but it would  
18 have been in the 2010, 2011 time frame. Maybe 2012,  
19 but I suspect '10 or '11.

20 Q. So is it fair to say to the best of your  
21 recollection and knowledge that Highland did not  
22 forgive a single loan made to an officer or employee  
23 for at least seven years prior to the petition date?

24 A. There's none that I can think of.

25 Q. Let's just turn our attention to

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1 December 2020.

2 Do you recall that you testified at length  
3 about your understanding of the conversations with  
4 Mr. Waterhouse and Ms. Hendrix?

5 Do you remember that?

6 A. Yes.

7 Q. Okay. Are you aware of any instruction ever  
8 made by Mr. Dondero or Mr. Waterhouse in November or  
9 December 2020 in order to make the payments that were  
10 due under the three term notes -- withdrawn.

11 There were three term notes that were due --  
12 withdrawn.

13 There are three term notes at issue in this  
14 case. Do you understand that?

15 A. Yeah, that's my understanding.

16 Q. And one of them was issued by NexBank; is  
17 that right?

18 A. NexPoint Advisors.

19 Q. Thank you for the clarification.

20 One was by HCRE?

21 A. Correct.

22 Q. And one was from HCMS; do I have that right?

23 A. Yes.

24 Q. And all three of those notes were executed as  
25 of May 31, 2017; right?

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1           A.     Yeah, that was the effective date on all  
2 three.

3           Q.     And they all rolled up previously outstanding  
4 notes that were due and payable to Highland.

5                     Do I have that right?

6           A.     Correct. To the best of my recollection.

7           Q.     So we'll refer to those notes as the term  
8 notes. Is that okay?

9           A.     Sure.

10          Q.     Do you have any knowledge that Mr. Dondero or  
11 Mr. Waterhouse ever instructed HCMLP to make the  
12 installment payments that were due at the end of 2020  
13 with respect to any of those term notes?

14          A.     No, I don't believe they provided that  
15 instruction to make those payments.

16                     MR. RUKAVINA: Objection. Move to strike.  
17 Lacks foundation.

18                     MR. MORRIS: I'm asking him if he ever heard.

19                     MR. RUKAVINA: But he answered a different  
20 question. He answered a different question.

21          Q.     (BY MR. MORRIS) Did you ever see anything in  
22 writing where either Mr. Dondero or Mr. Waterhouse  
23 directed HCMLP to make the annual installment payments  
24 that were due at the end of 2020 with respect to any of  
25 the term notes?

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1 A. No.

2 Q. Okay. But to the best of your recollection,  
3 in the 13-week forecast, those forecasts included the  
4 installment payments that were due at the end of the  
5 year; is that right?

6 A. They did.

7 Q. Did anybody ever tell you prior to  
8 February 1, 2021, that your group had made a mistake by  
9 not making the payment -- any of the payments that were  
10 due under the term notes at the end of 2020?

11 A. Not that I'm aware of.

12 Q. Did anybody tell you prior to February 1,  
13 2021, that the makers of the term notes expected  
14 Highland to effectuate the payments that were due at  
15 the end of the year without approval by Mr. Waterhouse  
16 or Mr. Dondero?

17 A. No.

18 Q. Have you seen any protest in writing prior to  
19 the commencement of the litigation by any of the makers  
20 of the notes about a failure on the part of HCMLP to  
21 perform its duties and make that payment at the end of  
22 the year?

23 A. No.

24 MR. MORRIS: I have no further questions.

25 MR. RUKAVINA: I have five minutes.

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1 FURTHER EXAMINATION

2 Q. (BY MR. RUKAVINA) Go to Exhibit 16, please,  
3 1-6.

4 A. Sure.

5 Q. Sir, this is an email string regarding that  
6 Rule 15(c) that you were talking about. I'm just going  
7 to ask you about the top email, but you're welcome to  
8 read the whole.

9 A. Uh-huh.

10 Q. You're copied on Mr. Waterhouse's email there  
11 October 6, 2020; right?

12 A. Yes, I'm on the email.

13 Q. And Mr. Waterhouse writes, the HCMFA note is  
14 a demand note. You would have read that; right?

15 A. Yes.

16 Q. Did you ever correct Mr. Waterhouse when he  
17 says the HCMFA note, as opposed to notes?

18 A. No, that's not something I would have  
19 corrected from Frank.

20 Q. Do you recall right now that you might have,  
21 when you read this, realized that he made a mistake?

22 A. It would have been such a de minimus,  
23 inconsequential mistake that I don't know that I would  
24 have addressed it.

25 Q. What about two sentences over, there was an

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1 agreement between HCMLP and HCMFA the earliest they  
2 could demand is May 2021.

3 Did you ever write to him and say that too  
4 was a mistake?

5 A. I didn't write to him.

6 Q. Did you realize back then when you read it  
7 that he had made a mistake?

8 A. I'm not certain.

9 Q. Did you -- and I'm not suggesting that you  
10 should have. You're a busy man. But did you attach  
11 any significance outside of the ordinary to this email  
12 exchange?

13 MR. MORRIS: Objection to the form of the  
14 question.

15 THE WITNESS: I struggle with how to answer  
16 that. I saw that this note was in response to retail  
17 15(c) follow-up on the Advisors.

18 At this point my role was different, where I  
19 was dealing with really the retail funds primarily. So  
20 the fact that I'm even on this email is somewhat  
21 incidental.

22 Q. (BY MR. RUKAVINA) But surely on October 6,  
23 2020 you knew that there were four HCMFA demand notes,  
24 didn't you?

25 A. I'm sure I would have had access to that



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1 information. I'm not sure that I was keeping track of  
2 how many were outstanding at any given point in time.

3 Q. And surely on October 6, 2020 you knew that  
4 only two of them couldn't be demanded by May of 2021,  
5 didn't you?

6 A. Again, I don't know that I was even really  
7 thinking about these notes at that time.

8 Q. Even though you were preparing weekly cash  
9 forecasts for Mr. Seery?

10 A. I wasn't preparing a weekly cash forecast for  
11 Mr. Seery.

12 Q. Going to Exhibit 13, please. Mr. Morris  
13 asked you a couple questions about this.

14 A. I'm sorry, 13?

15 Q. Yes, sir. And again, that paragraph 3 that  
16 talks about prepayment.

17 Can you find anything in here, sir, that says  
18 that a prepayment does not relieve the maker of any  
19 regularly scheduled payment?

20 A. Sorry, that's a lot to comprehend. If you  
21 could ask again.

22 Q. Is there any provision that you can see here  
23 that's to the effect that a prepayment will not relieve  
24 the maker of any regularly scheduled payment?

25 A. I don't see that specific provision. I just

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1 read it for what is on the page.

2 Q. Isn't it, sir, in your experience the case  
3 that a promissory note, if it intended not to relieve  
4 the borrower of regularly scheduled payments would say  
5 that a prepayment does not relieve the borrower of  
6 regularly scheduled payments?

7 MR. MORRIS: Objection to the form of the  
8 question.

9 THE WITNESS: That's a legal question. I  
10 can't -- I don't know the answer.

11 Q. (BY MR. RUKAVINA) Do you remember seeing  
12 promissory notes that say something like that?

13 A. Not that I can recall.

14 Q. You'd be surprised if that's what promissory  
15 notes say?

16 MR. MORRIS: Objection to the form of the  
17 question.

18 THE WITNESS: I don't know.

19 Q. (BY MR. RUKAVINA) And Mr. Morris asked you  
20 about this. I'm trying to burn through this so the man  
21 can make his plane.

22 Section 2.1 talks about 30 equal annual  
23 payments, annual installments.

24 You see that?

25 A. Yes, I see that.

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1 Q. And Mr. Morris asked you whether you see  
2 anything in here that says that a prepayment relieves  
3 an annual installment.

4 Do you remember that question?

5 MR. MORRIS: Objection. That's not what I  
6 asked.

7 THE WITNESS: I don't remember that question.

8 Q. (BY MR. RUKAVINA) Reading Section 2.1 and 3  
9 together, what would a prepayment apply to other than  
10 an annual installment? Do you have a view on that?

11 MR. MORRIS: Objection to the form of the  
12 question.

13 THE WITNESS: Again, I struggle with  
14 prepayment. But as I read Section 3, it would be  
15 applied first to unpaid accrued interest and then to  
16 unpaid principal.

17 Q. (BY MR. RUKAVINA) Have you ever in your  
18 personal life prepaid a promissory note before -- have  
19 you ever in your personal life prepaid a promissory  
20 note prior to its maturity?

21 MR. MORRIS: Objection to the form of the  
22 question.

23 THE WITNESS: I don't know.

24 Q. (BY MR. RUKAVINA) Sitting here today, with  
25 your CPA, your MBA and you're a CFO of a large entity,

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1 you don't understand what a prepayment means?

2 MR. MORRIS: Objection. Argumentative.

3 I direct you not to answer.

4 You're going to have ask a different question.

5 That's an argumentative question and it's insulting.

6 MR. RUKAVINA: What's the privilege on which  
7 you're directing him not to answer?

8 MR. MORRIS: I just said it's argumentative.

9 MR. RUKAVINA: I'm trying to let you get to  
10 your flight.

11 MR. MORRIS: Ask a proper question. Don't  
12 make this about me.

13 Q. (BY MR. RUKAVINA) You were going to answer  
14 my question, sir?

15 MR. MORRIS: No, I'm directing him not to  
16 answer.

17 MR. RUKAVINA: Then we'll end this deposition  
18 with a motion to compel.

19 MR. MORRIS: Okay. You do that.

20 MR. RUKAVINA: I'm making a motion to compel.  
21 We'll call the judge as soon as we land in New York  
22 tomorrow.

23 MR. MORRIS: You have to read the whole  
24 question. You can ask the question without the  
25 verbiage; right?

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1 MR. RUKAVINA: And I asked you on the basis  
2 of what privilege are you instructing your --

3 MR. MORRIS: Argumentative.

4 MR. RUKAVINA: That's not a privilege.

5 MR. MORRIS: Sir, you can rephrase your  
6 question and end this right now by not being insulting  
7 to my client.

8 Q. (BY MR. RUKAVINA) I was not trying to be  
9 insulting, sir.

10 I'm asking you again, you do not, sitting  
11 here today, have an understanding of what the word  
12 "prepayment" for a promissory note means?

13 MR. MORRIS: Objection to the form of the  
14 question.

15 You can answer that one.

16 THE WITNESS: In the context that you're  
17 asking the question --

18 Q. (BY MR. RUKAVINA) No, I'm not asking any  
19 context. Sitting here today, do you have an  
20 understanding of what the word "prepayment" means when  
21 it comes to a borrower/lender relationship?

22 MR. MORRIS: Objection to the form of the  
23 question.

24 THE WITNESS: Yes, I have a general  
25 understanding.

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1 Q. (BY MR. RUKAVINA) What is your  
2 understanding?

3 A. That -- you can look at the note.

4 Q. I'm not asking about the note. We got to go  
5 step by step.

6 What is your general understanding as to what  
7 a prepayment means?

8 MR. MORRIS: Objection to the form of the  
9 question.

10 THE WITNESS: It depends on the context and  
11 it's going to depend on what the note says about  
12 prepayments. So I have a hard time answering that  
13 question.

14 Q. (BY MR. RUKAVINA) So you would agree with me  
15 that you have to look at the note before you can answer  
16 that question?

17 MR. MORRIS: Objection to the form of the  
18 question.

19 THE WITNESS: I would want to look at the  
20 note before I answer the question, because prepayment  
21 is a term that can be used as a defined term or in a  
22 casual sense, and those two can sometimes get confused  
23 and misconstrued.

24 Q. (BY MR. RUKAVINA) Would you agree with me  
25 that in any and all circumstances a prepayment is a

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1 payment made prior to the time that it's due?

2 MR. MORRIS: Objection to the form of the  
3 question.

4 THE WITNESS: Yes, in the most general sense  
5 a prepayment, the prefix "pre" indicates that it's  
6 before some other event. So from that standpoint,  
7 prepayment means it was to some extent paid early.

8 MR. RUKAVINA: Thank you.

9 Pass the witness.

10 MR. MORRIS: No further questions.

11 Michael?

12 MR. AIGEN: No questions.

13 THE REPORTER: Mr. Morris, do you want a copy  
14 of the transcript?

15 MR. MORRIS: I sure do.

16 THE REPORTER: Mr. Aigen, do you want a copy  
17 of the transcript?

18 MR. AIGEN: Yes, we would also like a copy.

19 MR. MORRIS: Yeah, and I'd like that rush.

20 (Whereupon, the deposition adjourned at  
21 5:14 P.M.)

22 --oOo--

23 I declare under penalty of perjury that the  
24 foregoing is true and correct. Subscribed at

25 \_\_\_\_\_, Texas, this \_\_\_\_ day of

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1 \_\_\_\_\_, 2021.

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5 **DAVID KLOS**

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CERTIFICATE OF REPORTER


I, BRANDON D. COMBS, a Certified Shorthand Reporter, hereby certify that the witness in the foregoing deposition was by me duly sworn to tell the truth, the whole truth, and nothing but the truth in the within-entitled cause;

That said deposition was taken in shorthand by me, a disinterested person, at the time and place therein stated, and that the testimony of the said witness was thereafter reduced to typewriting, by computer, under my direction and supervision;

That before completion of the deposition, review of the transcript was not requested. If requested, any changes made by the deponent (and provided to the reporter) during the period allowed are appended hereto.

I further certify that I am not of counsel or attorney for either or any of the parties to the said deposition, nor in any way interested in the event of this cause, and that I am not related to any of the parties thereto.

DATED: November 1, 2021

  
Brandon Combs, Certified Shorthand Reporter No. 10927 in, and for, the

HCMFA APP 0790

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113:4 123:17 126:5,15,22 <b>years</b> 5:9 6:17 15:12 24:10,17 30:18 32:21 33:20 34:17 39:14 48:7 65:17 66:3 69:18 94:20 95:3,11 123:23 <b>years'</b> 34:10 <b>yes-or-no</b> 94:12 <b>York</b> 2:11 132:21	46:12 49:10 114:1 129:12 129:14 <b>13-week</b> 126:3 <b>14</b> 27:15,17,23 36:12 40:20 42:17 44:13,22 48:12 49:1 58:25 59:23 60:2,23 61:18 64:2,5 <b>15</b> 61:7 <b>15(c)</b> 80:9 121:4 127:6 128:17 <b>16</b> 8:9 31:18 127:2 <b>17</b> 8:10 <b>18</b> 8:10 <b>19</b> 8:24 45:24 49:2 <b>1982</b> 4:10	<b>200</b> 12:6 <b>2009</b> 5:12,15 6:3 6:3 29:24,25 122:17 <b>2010</b> 6:9 106:13 123:18 <b>2011</b> 6:10,21 106:13 123:18 <b>2012</b> 123:18 <b>2017</b> 6:22 22:13 23:7 24:8,18 88:22 105:12 124:25 <b>2018</b> 116:14 119:14 120:2 <b>2019</b> 8:11,14 9:10 9:13 10:6 11:10 11:16,21 27:14 28:9 29:8,17,21 29:25 31:18 35:8 36:15,22 40:21 41:1,13 42:8,16,16 44:13,13 45:23 45:24 65:13,15 66:11 75:14 78:20 80:6,19 87:2,9,13 88:9 88:14 89:2,17 91:21 92:8 93:2 93:11 105:13 110:20 111:6 111:12,21 112:2,6,8 114:23 115:9 121:7 <b>2020</b> 7:13,22 24:20,24 51:10 51:15,22 53:18 54:24 56:17,22 57:6,13,17,22 60:20 61:21 63:19 98:18,24 99:19 100:15 101:2 102:14	102:17,17 103:23 112:17 113:2,4,12 120:24 121:7 121:21 124:1,9 125:12,24 126:10 127:11 128:23 129:3 <b>2021</b> 1:15,21 13:24 58:25 59:23 60:2 61:8 87:16 88:1 112:22,25 113:3,10,16 126:8,13 128:2 129:4 136:1 137:22 <b>21-03004-sgj</b> 1:8 <b>214</b> 138:3 <b>23-point</b> 45:20 <b>23.034-</b> 45:21 <b>24.7-</b> 46:10 <b>27</b> 1:15,21 4:20 <b>29</b> 37:6	51:10,15 56:17 56:22 57:6,13 57:17,21 58:7,9 60:25 87:15 88:1 98:18,24 120:2 124:25 <b>3102</b> 2:17 <b>312</b> 138:1 <b>338-</b> 37:8 <b>34th</b> 2:11 <b>3763</b> 83:15 <b>3800</b> 2:4 <b>38th</b> 1:25 <b>398,000</b> 85:23
<b>Z</b> <b>zero</b> 46:8 49:6 80:1 <b>ZIEHL</b> 2:10	<b>2</b> <b>2</b> 66:24 67:2,7 73:25 76:3 80:4 85:23 87:9,13 92:8 114:23 115:9 <b>2.03-</b> 46:9 <b>2.1</b> 28:14 45:25 46:3 49:1,8 130:22 131:8 <b>2.1-</b> 46:5,7 <b>2.4</b> 68:7 69:2 70:7,19,23 72:7 73:18 75:22 76:3 77:10,18 78:9 85:18,20 91:22 92:8,15 115:8 116:3,23 <b>2.4-</b> 70:21 73:23 77:4 85:24 86:13 90:6 <b>2:30</b> 1:22 <b>20</b> 8:24 24:17	<b>3</b> <b>3</b> 46:13 50:8 67:17 68:4 74:18,22 76:5 82:24 83:10,20 93:2,11 114:4,7 114:10,22 118:1,13 129:15 131:8 131:14 <b>30</b> 24:10,17 130:22 <b>30-year</b> 23:15 24:10 26:2 <b>30(b)(6)</b> 19:12,20 <b>30.7</b> 21:22 <b>30.7-</b> 27:12 <b>300,000</b> 28:14 <b>31</b> 22:13 23:7 24:18 45:21	<b>4</b> <b>4</b> 3:3 45:23 91:21 <b>4.4</b> 118:9 <b>4.4-</b> 76:4 <b>411,000</b> 37:8 <b>4228</b> 138:2 <b>445-9548</b> 138:3	<b>5</b> <b>5</b> 74:7,8,24 75:4 75:23 77:4,11 77:18 78:3 79:22 80:2 81:18 82:25 85:4 86:13 91:22 93:3 114:16 118:8 118:13,24 119:7,14 <b>5-</b> 76:5 90:1 <b>5,019,000</b> 75:3 <b>5.2</b> 80:19 <b>5:00</b> 95:19 <b>5:14</b> 1:22 135:21 <b>500</b> 1:24 2:3 <b>500,000</b> 123:9,12
<b>0</b> <b>0</b> 36:8 69:4 <b>08</b> 4:24 <b>09</b> 4:24	<b>1</b> <b>1</b> 8:11 24:20,23 66:24 67:2,7 80:3 113:10 126:8,12 137:22 <b>1-31-23</b> 138:4 <b>1-4</b> 27:17 <b>1-6</b> 127:3 <b>1.3</b> 28:13,14 <b>1.4</b> 58:25 <b>10</b> 19:6 32:21 33:20 34:10,17 69:18 95:3 123:19 <b>100</b> 15:25 <b>10017-2024</b> 2:11 <b>101</b> 138:2 <b>109</b> 3:5 <b>11</b> 123:19 <b>127</b> 3:6 <b>13</b> 23:8 27:9	<b>6</b> <b>6</b> 4:10 127:11 128:22 129:3 <b>6/30</b> 122:2		

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<b>600,000</b> 76:6,7 <b>630,000</b> 28:14 <b>66,000</b> 46:7 49:4 49:5,7 <hr/> 7 <hr/> 7 58:11,15 <b>7.4</b> 75:9 78:22 79:12 89:2 90:17,20,22,24 119:25 122:5 <b>7.4</b> 89:19 91:13 <b>75</b> 18:1 <b>750,000</b> 28:13 37:6 <b>75201</b> 2:4 <b>75206</b> 138:2 <b>75219</b> 2:18 <b>777</b> 2:17 <b>780</b> 2:10 <hr/> 8 <hr/> <b>80</b> 15:25 <b>800</b> 138:3 <b>855-5100</b> 138:3 <hr/> 9 <hr/> <b>9</b> 19:5 <b>95</b> 3:4				
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IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

In re	§	
	§	
HIGHLAND CAPITAL MANAGEMENT,	§	Chapter 11
L.P.,	§	
	§	Case No. 19-34054-sgj11
Debtor.	§	
<hr/>		
HIGHLAND CAPITAL MANAGEMENT,	§	
L.P.,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Adv. No. 21-03004
	§	
HIGHLAND CAPITAL MANAGEMENT	§	
FUND ADVISORS, L.P.	§	
	§	
Defendant.	§	
<hr/>		

**DECLARATION OF DAVOR RUKAVINA**

The undersigned, Davor Rukavina, hereby declares under penalty of perjury pursuant to the laws of the United States of America the following:

1. My name is Davor Rukavina. I am over the age of 21, have never been convicted of a felony or crime of moral turpitude, and am otherwise qualified to give this Declaration.
2. I am an attorney duly licensed to practice law in the State of Texas. I am lead counsel for Highland Capital Management Fund Advisors, L.P. ("HCMFA"), in the above styled and numbered Adversary Proceeding.
3. Attached hereto as Exhibit "A" is a true and correct copy of the *Defendant's Second Set of Requests for Production to Plaintiff*, served by HCMFA on May 28, 2021.

4. Attached hereto as Exhibit “B” is a true and correct copy of the *Debtor’s Responses and Objections to Defendant’s Second Set of Requests for Production*, served by Highland Capital Management, L.P. (the “Plaintiff”), on June 28, 2021.

5. The first time that the Plaintiff produced the promissory notes the subject of this Adversary Proceeding, in their native Word format, was on October 26, 2021.

6. I caused two of my employees, Julian Vasek and An Nguyen, both associates at Munsch Hardt under my direct supervision, to review the Plaintiff’s production in this Adversary Proceeding for any e-mail from Mr. Frank Waterhouse to Ms. Kristin Hendrix authorizing her to affix his electronic signature to the promissory notes the subject of this Adversary Proceeding. After they originally found no such e-mail, I instructed them to search the production again just to be certain. Again, they reported to me that, after searching again, they found no such e-mail. I then personally reviewed all e-mails in said production from Mr. Waterhouse to anyone in April and May, 2019, and I found no such e-mail. Accordingly, I conclude that the Plaintiff’s production to HCMFA in this Adversary Proceeding does not contain any e-mail by which Mr. Waterhouse authorized Ms. Hendrix to affix his electronic signature to said notes.

7. Included in the *Defendant’s Appendix in Support of Second Motion for Leave to Amend Answer* at HCMFA APP 53-449 is a true and correct copy of a deposition of Frank Waterhouse, without exhibits, taken in this Adversary Proceeding on October 19, 2021.

8. Included in the *Defendant’s Appendix in Support of Second Motion for Leave to Amend Answer* at HCMFA APP 450-653 is a true and correct copy of a deposition of Kristin Hendrix, with exhibits, taken in this Adversary Proceeding on October 27, 2021.

9. Included in the *Defendant’s Appendix in Support of Second Motion for Leave to Amend Answer* at HCMFA APP 654-813 is a true and correct copy of a deposition of David Klos, taken in this Adversary Proceeding on October 27, 2021.

10. I hereby swear under penalty of perjury that the foregoing is true and correct to the best of my knowledge and ability.

Executed: November 30, 2021.

/s/ Davor Rukavian  
DAVOR RUKAVINA

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

In re	§	
	§	
HIGHLAND CAPITAL MANAGEMENT,	§	Chapter 11
L.P.,	§	
	§	Case No. 19-34054-sgj11
Debtor.	§	
<hr/>		
HIGHLAND CAPITAL MANAGEMENT,	§	
L.P.,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Adv. No. 21-03004
	§	
HIGHLAND CAPITAL MANAGEMENT	§	
FUND ADVISORS, L.P.	§	
	§	
Defendant.	§	

**DEFENDANT’S SECOND SET OF REQUESTS FOR PRODUCTION TO PLAINTIFF**

**To: Highland Capital Management, L.P., by and through its counsel of record, John Morris, Esq., Pachulski Stang Ziehl & Jones LLP, 10100 Santa Monica Blvd., 13th Floor, Los Angeles, CA 90067**

Pursuant to Federal Rule of Civil Procedure 34, as made applicable to this proceeding by Federal Rule of Bankruptcy Procedure 7034, defendant Highland Capital Management Fund Advisors, L.P. hereby serves upon plaintiff Highland Capital Management, L.P. this its *Second Set of Requests for Production to Plaintiff* (the “Requests”). Responses to the Requests must be served on or before **June 28, 2021**, on the following:

Munsch Hardt Kopf & Harr, P.C.  
Attn: Davor Rukavina  
3800 Ross Tower  
500 N. Akard St.  
Dallas, Texas 75201

**EXHIBIT "A"**

Pursuant to Federal Rule of Civil Procedure 34(b)(1)(C), made applicable to this adversary proceeding by Federal Rule of Bankruptcy Procedure 7034, electronically stored information should be produced in native format.

## **I. DEFINITIONS**

In responding to these Requests, you are instructed to use the following definitions:

“Communication(s)” means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise) by any means, including but not limited to any meeting, conversation, discussion, conference, correspondence, message, or other written or oral transmission, exchange, or transfer of information in any form between two or more persons, including in person or by telephone, facsimile, telegraph, telex, electronic mail or other medium. The term also includes any Document transmitted or exchanged during such transmittal of information.

“Complaint” means the *Complaint for (i) Breach of Contract and (ii) Turnover of Property of the Debtor’s Estate*, filed by the Debtor in this Adversary Proceeding.

“Debtor” means Highland Capital Management, L.P. and includes all agents and representatives thereof.

“Document” means all handwritten, typed, or printed matter of any kind, including the originals and all non-identical copies, whether different from the original by reason of any notation made on such copies or otherwise, including, without limitation, agreements, correspondence, forecasts, memoranda, e-mails, notes, jottings, speeches, press releases, diaries, examinations, statistics, letters, telegrams, minutes, time records, payroll records, expense records, contracts, reports, studies, training manuals, canceled checks, statements, receipts, delivery tickets, returns, summaries, work orders, pamphlets, books, prospectuses, statement of operations, inter-office and intra-office communications, internal and external audit reports, internal and external accounting reports, offers, notations of any sort of conversations, telephone calls, meetings, or other communications, bulletins, printed matter, computer print-outs, teletypes, invoices, worksheets, and all drafts, alterations, modifications, changes and amendments of any of the foregoing, graphic or aural records of representations of any kind, including, without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings, motion pictures, and electronic, mechanical or electronic records or representations of any kind, including, without limitation, emails, tapes, cassettes, digital images, digital videos, videotapes, audiotapes, laser disks, disks (including CD-ROM disks), plans or other representations of anything concerning, describing, referring or relating, directly or indirectly, in whole or in part, to the subject matter of the discovery request at issue.

“HCMFA” means Highland Capital Management Fund Advisors, L.P. and includes all agents and representatives thereof.

“NAV Error” means the NAV error in the Highland Global Allocation Fund referred to in that certain April 7, 2019 memo from HCMFA to the Securities and Exchange Commission that was provided to John Morris by Davor Rukavina attached to an email dated May 24, 2021.

“Notes” means those certain alleged promissory notes attached as Exhibits 1 and 2 to the Complaint.

“Related” or “related to” means, without limitation, the following: effect, concern, refer to, reflect, evidence, display, contain, show, prove, encompass, support, demonstrate, involve, and/or include, in any way legally, logically, or factually connected to the matter referred to, or have a tendency to prove or disprove the matter referred to.

## **II. REQUESTS FOR PRODUCTION**

### **REQUEST NO. 8**

The Debtor’s compliance manual.

**RESPONSE:**

### **REQUEST NO. 9**

All Microsoft Word copies of the Notes, including metadata.

**RESPONSE:**

### **REQUEST NO. 10**

All email communications related to preparation of the Notes.

**RESPONSE:**

### **REQUEST NO. 11**

All email communications with external auditors related to the Notes.

**RESPONSE:**

**REQUEST NO. 12**

All email communications related to the NAV Error.

**RESPONSE:**

**REQUEST NO. 13**

All email communications related to any insurance claim related to the NAV Error.

**RESPONSE:**

**REQUEST NO. 14**

All email communications related to the payment obligations of HCMFA to Highland Global Allocation Fund for the NAV Error.

**RESPONSE:**

Dated at Dallas, Texas this 28th day of May, 2021.

**MUNSCH HARDT KOPF & HARR, P.C.**

By: /s/ Davor Rukavina

Davor Rukavina, Esq.  
Texas Bar No. 24030781  
Julian P. Vasek, Esq.  
Texas Bar No. 24070790  
3800 Ross Tower  
500 N. Akard Street  
Dallas, Texas 75201-6659  
Telephone: (214) 855-7500  
Facsimile: (214) 855-7584  
Email: drukavina@munsch.com

**COUNSEL FOR HIGHLAND CAPITAL  
MANAGEMENT FUND ADVISORS, L.P.**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that, on this the 28th day of May, 2021, he caused a true and correct copy of this document to be served by e-mail on John Morris, Esq., counsel of record for the Debtor/Plaintiff.

/s/ Davor Rukavina

\_\_\_\_\_  
Davor Rukavina





**DEBTOR'S RESPONSES AND OBJECTIONS TO DEFENDANT'S  
SECOND SET OF REQUESTS FOR PRODUCTION**

Highland Capital Management, L.P., ("Plaintiff" or the "Debtor") hereby responds to *Defendant's Second Set of Requests for Production to Plaintiff* (the "Requests")<sup>2</sup> served by Highland Capital Management Fund Advisors, L.P. ("HCMFA" or "Defendant") in the above-captioned adversary proceeding (the "Adversary Proceeding"). The Debtor's responses and objections to the Requests (the "Responses") are made pursuant to Federal Rules of Civil Procedure ("FRCP") 26, 33, and 34 as made applicable in bankruptcy cases pursuant to Federal Rules of Bankruptcy Procedure 7026, 7033, and 7034.

**GENERAL OBJECTIONS**

Unless otherwise specified, the following general objections and caveats are applicable to each and every Response and are incorporated into each Response as though set forth in full:

1. The Responses contained herein are based upon information presently known and ascertained by the Debtor.
2. The Debtor objects to the Requests to the extent they seek information or documents that are protected from discovery by the attorney-client privilege, the attorney work product doctrine or any other privilege or immunity. The inadvertent disclosure or production of any document that is protected from discovery by any privilege or immunity shall not constitute a waiver of any such privilege or immunity. All references in these objections and responses to the Debtor's agreement to produce documents shall be construed to mean non-privileged documents.
3. The Debtor objects to the Requests to the extent they request information that is not reasonably or readily available to it, in its possession, custody or control, or is more

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<sup>2</sup> Capitalized terms not defined herein shall have the meanings set forth in the Requests.

readily available to HCMFA from another source or for which the burden of obtaining such information is not substantially greater for HCMFA than it is for the Debtor.

4. All specific responses to the Requests are provided without waiver of, and with express reservation of (a) all objections as to competency, relevancy, materiality, and admissibility of the responses and the subject matter thereof as evidence for any purpose in any further proceedings in this matter; (b) all privileges, including the attorney-client privilege and work product doctrine; (c) the right to object to the use of such responses, or the subject matter thereof, on any ground in any further proceeding in this action; and (d) the right to object on any ground at any time to a demand or request for further responses to these or any other discovery requests or other discovery proceedings.

5. The Debtor objects to the Requests to the extent they seek to expand on or conflict with Federal Rules of Civil Procedure, the Federal Rules of Bankruptcy Procedure and/or the Local Rules of the Bankruptcy Court for the Northern District of Texas.

6. The Debtor's agreement to produce documents with respect to a specific Request shall not be construed as a representation that such documents actually exist or are within Plaintiff's possession, custody or control.

7. These General Objections and Responses shall be deemed to be incorporated by reference into the Specific Responses and Objections set forth below.

**SPECIFIC OBJECTIONS AND RESPONSES TO DOCUMENT REQUESTS**

**REQUEST FOR PRODUCTION NO. 8:**

The Debtor's compliance manual.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 8:**

The Debtor objects to Request for Production No. 8 on the grounds that it is vague, overly broad, not proportional to the needs of the case, and not relevant to the parties' claims or defenses. *See* Fed. R. Civ. P. 26(b)(1).

**REQUEST FOR PRODUCTION NO. 9:**

All Microsoft Word copies of the Notes, including metadata.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 9:**

The Debtor objects to Request for Production No. 9 to the extent the term "metadata" is vague. Subject to the General Objections and this specific objection, the Debtor will conduct a reasonable search for, and produce, documents responsive to this Request.

**REQUEST FOR PRODUCTION NO. 10:**

All email communications related to preparation of the Notes.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 10:**

Subject to the General Objections, the Debtor will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 10, including using search terms and identifying custodians that the Debtor believes are most likely to yield responsive information.

**REQUEST FOR PRODUCTION NO. 11:**

All email communications with external auditors related to the Notes.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 11:**

Subject to the General Objections, the Debtor will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 11, including using search terms and identifying custodians that the Debtor believes are most likely to yield responsive information.

**REQUEST FOR PRODUCTION NO. 12:**

All email communications related to the NAV Error.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 12:**

Subject to the General Objections, the Debtor will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 12, including using search terms and identifying custodians that the Debtor believes are most likely to yield responsive information.

**REQUEST FOR PRODUCTION NO. 13:**

All email communications related to any insurance claim related to the NAV Error.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 13:**

The Debtor objects to Request for Production No. 13 on the grounds that it is vague, overly broad, not proportional to the needs of the case, and not relevant to the parties' claims or defenses. *See* Fed. R. Civ. P. 26(b)(1). Subject to the General Objections and these specific objections, the Debtor will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 13 to the extent they are relevant to the NAV Error and the Notes, including using search terms and identifying custodians that the Debtor believes are most likely to yield responsive information.

**REQUEST FOR PRODUCTION NO. 14:**

All email communications related to the payment obligations of HCMFA to Highland Global Allocation Fund for the NAV Error.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 14:**

Subject to the General Objections, the Debtor will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 14, including using search terms and identifying custodians that the Debtor believes are most likely to yield responsive information.

Dated: June 28, 2021

**PACHULSKI STANG ZIEHL & JONES LLP**

Jeffrey N. Pomerantz (CA Bar No. 143717)

*(admitted pro hac vice)*

Ira D. Kharasch (CA Bar No. 109084)

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-and-

**HAYWARD PLLC**

*/s/ Zachery Z. Annable*

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